

RESOLUTION OF THE PLANNING BOARD
OF THE TOWNSHIP OF WYCKOFF, BERGEN COUNTY, NEW JERSEY,
MEMORIALIZING THE ADOPTION OF THE
2018 THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN
AND RECOMMENDING THAT THE TOWNSHIP COMMITTEE
ENDORSE SAME FOR PURPOSES OF OBTAINING A FINAL JUDGMENT OF
COMPLIANCE AND REPOSE FROM THE COURT

WHEREAS, the Planning Board of the Township of Wyckoff has the statutory power, after public hearing, to adopt or amend a Master Plan, and any of the elements thereto, to guide the use of the lands within the Township in a manner that protects public health and safety and promotes the general welfare pursuant to N.J.S.A. 40:55D-28; and

WHEREAS, according to the New Jersey Fair Housing Act of 1985, municipalities that choose to enact and enforce a zoning ordinance are obligated to prepare and adopt a Housing Element as part of the municipal Master Plan; and

WHEREAS, the Fair Housing Act had established the Council on Affordable Housing ("COAH") as the State agency to create Rules and Regulations for determining municipal low and moderate income affordable housing obligations and for the development and administration of low- and moderate-income housing within municipalities, and also to provide a venue for approval (by way of the grant of "substantive certification") of municipal housing elements and fair share plans that were found to comply with COAH's Rules; and

WHEREAS, the first round of COAH's Rules covered the six (6) year time period from 1987 to 1993, and the second round of COAH's Rules covered the entire cumulative twelve year period from 1987 to 1999 (now referred to collectively as the "prior round"); and

WHEREAS, the first version of COAH's third round Rules was originally adopted on December 20, 2004 to cover the period from January, 2000, to December, 2013, but that set of Rules was challenged and subsequently invalidated by the Appellate Division; and

WHEREAS, in 2008, COAH adopted two more iterations of its third round Rules, each covering the period from July 1, 2000, to July 1, 2018, but the last iteration of the Rules was also challenged, and, on October 8, 2010, the Appellate Division invalidated COAH's 2008 Rules; and

WHEREAS, the Planning Board had adopted and the Township Committee had endorsed two previous versions of a Third Round Housing Element and Fair Share Plan, one in December of 2005 and one in December of 2008, each prepared to comply with COAH's third round Rules in effect at that time; and

WHEREAS, on September 26, 2013, the New Jersey Supreme Court upheld the Appellate Division's 2010 decision in In Re Adoption of 5:96 and 5:97 by New Jersey Committee on Affordable Housing, 215 N.J. 578 (2013) and ordered COAH to prepare and adopt new Rules, which, in the end, COAH failed to do; and

WHEREAS, on March 10, 2015, in response to a Motion in Aid of Litigants' Rights filed by Fair Share Housing Center, the Supreme Court removed COAH's responsibility for reviewing and approving municipal housing elements and fair share plans and transferred that responsibility to the Superior Court judges in each vicinage; and

WHEREAS, to protect municipalities that had voluntarily submitted to the COAH process from builders' remedy lawsuits, the Supreme Court provided an opportunity (and a period of temporary immunity) during which any municipality that had either participated in the COAH process during the third round but had not yet been certified, or that had been certified by COAH as to compliance with its third round fair share obligation, a window of opportunity to file a Declaratory Judgment action in Superior Court, seeking the Court's approval of either the municipality's previously adopted third round Housing Element and Fair Share Plan or a modification thereof and granting Fair Share Housing Center ("FSHC"), as the moving party before the Supreme Court, interested party status in all such Declaratory Judgment actions; and

WHEREAS, Wyckoff Township filed such a Declaratory Judgment action in the Bergen County Superior Court in July of 2015, and through that litigation reached settlements with FSHC and with a Defendant/Intervenor, Canterbury Development, Inc.

("Canterbury"), as to the magnitude of the Township's third round fair share obligation and how such obligation should be fulfilled, including how the Canterbury property should be developed in furtherance of such obligations; and

WHEREAS, the settlements were approved by the Court following a Fairness and Preliminary Compliance Hearing held on July 18, 2018 by way of an Order entered on July 23, 2018; and

WHEREAS, to implement the settlements that were approved by the Court, Wyckoff must prepare and adopt a new Third Round Housing Element and Fair Share Plan, together with all implementing ordinances and resolutions, to be reviewed by the Court-appointed Special Master and approved by the Court; and

WHEREAS, a draft document entitled 2018 Third Round Housing Element and Fair Share Plan was prepared and submitted to the Wyckoff Planning Board by its Planning Consultant, Elizabeth C. McKenzie, AICP, PP, which draft document sets forth a plan for addressing the Township's agreed upon *and Court-approved* third round fair share obligation in conformance with the terms of the settlement agreements with FSHC and Canterbury as well as all requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1, et seq.), the Fair Housing Act amendments of 2008, and any of COAH's Rules that had been upheld by the Court; and

WHEREAS, notice was given of a public hearing to be held by the Planning Board on October 15, 2018 regarding the proposed 2018 Third Round Housing Element and Fair Share Plan; and

WHEREAS, a draft of the proposed 2018 Third Round Housing Element and Fair Share Plan was placed on file with the Bergen County Planning Board and in the office of the Wyckoff Township Clerk; and

WHEREAS, a public hearing on said draft document was held on October 15, 2018; and

WHEREAS, certain minor, non-substantive corrections and changes to the draft document that had been placed on file with the County Planning Board and in the office of the Township Clerk were announced and fully described on the record at the public hearing; and

WHEREAS, the Planning Board did unanimously approve and adopt said corrected draft document by motion on the record following the public hearing;

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Wyckoff as follows:

1. The Planning Board hereby memorializes its adoption of the document entitled 2018 Third Round Housing Element and Fair Share Plan with all of the corrections and changes described on the record at the public hearing on October 15, 2018, which changes have already been incorporated into the revised text of that document bearing an adoption date of October 15, 2018.
2. A copy of this resolution together with the October 15, 2018 adopted version of the document herein cited shall be sent to the Bergen County Planning Board and to the Clerks of the municipalities surrounding the Township of Wyckoff.
3. This resolution shall take effect immediately.

TOWNSHIP OF WYCKOFF PLANNING BOARD

Susan McQuaid

Susan McQuaid, Secretary

Robert Fortunato

Robert Fortunato, Chairman

Adopted: November 14, 2018

I, Susan McQuaid, Secretary to the Planning Board of the Township of Wyckoff in the County of Bergen, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by the said Planning Board on the 14th day of November, 2018 memorializing its action taken on the 15th day of October, 2018 approving the 2018 Third Round Housing Element and Fair Share Plan, with the incorporation of the corrections and changes described on the record at the public hearing, which are now reflected in the document bearing an adoption date of October 15, 2018.

Susan McQuaid

SUSAN MCQUAID, Secretary