

BOROUGH OF CRESSKILL

MAYOR AND COUNCIL

CRESSKILL

BERGEN COUNTY

NEW JERSEY

REGULAR MEETING

MARCH 6, 2024

1. Robert Rummel led the Salute to the Flag and Pledge of Allegiance.
2. The Borough Clerk announced that this is a Regular Meeting of the Mayor and Council of which at least 48 hours' notice has been given by posting in the Borough Hall, publication in The Record and delivery to all members of the governing body.
3. Mayor Romeo called the meeting to order at 7:08 P.M.
4. Present: Council Members Kaplan, McLaughlin, Savas, Schultz-Rummel, Spina
Also Present: Attorney Diktas, Administrator Lavin, Chief Domville
Absent: Council Member Olmo
5. Motion by Council Member Savas and seconded by Council Member Schultz-Rummel to approve the minutes of the Mayor and Council Regular meeting of February 21, 2024.

All in Favor. None Opposed.

Motion adopted.

REPORTS OF COMMITTEES AND OFFICIALS

6. No reports.
7. Borough Clerk Maragliano explained all items on the Consent Agenda.

CONSENT AGENDA

NEW BUSINESS

*Resolutions

8. BE IT RESOLVED by the Mayor and Council of the Borough of Cresskill that the Tax Collector be, and hereby is, authorized to effect the following tax refund due to overpayment of taxes:

| <u>TAX</u> | <u>PERIOD</u> | <u>BLOCK</u> | <u>LOT</u> | <u>QUAL</u> | <u>NAME</u> | <u>AMOUNT</u> |
|------------|--------------------------|--------------|------------|-------------|--|---------------|
| | 1 st qtr 2024 | 124 | 220.01 | | Carnegie Title 55 Harrison Road Suite 304 Glen Rock, NJ 07452 (for: 259 Highland Street) | \$ 4,752.00 |

9. WHEREAS, Anita Singh is the owner of premises commonly known as 66 Grant Avenue, Cresskill, New Jersey; and

WHEREAS, Cresskill Housing Rehabilitation holds a mortgage in the amount of \$14,945.00 on the aforesaid premises known as Block 17, Lot 6.01; and

WHEREAS, the mortgage was recorded or registered in the office of the Bergen County recording office on February 9, 2007 in Mortgage Book 16560 on page 0187; and

WHEREAS, the mortgage has been paid in full or forgiven or otherwise satisfied and discharged.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Cresskill that the Mayor be and is hereby authorized to execute a Discharge of Mortgage discharging the mortgage held by the Borough of Cresskill, Housing Rehabilitation Program in the amount of \$14,945.00 for premises commonly known as 66 Grant Avenue, Cresskill, New Jersey, Block 17, Lot 6.01.

10. BE IT RESOLVED that the following solicitor's license, which has been approved by the Chief of Police, be issued under the provisions of Chapter 140 of the Code of the Borough of Cresskill for the term ending December 31, 2024:

Trinity Solar, LLC
2211 Allenwood Road
Wall Township, NJ 07719
Purpose: Free Solar Consultations

#24-02 – Julio Saavedra

11. BE IT RESOLVED by the Mayor and Council, Borough of Cresskill, that the following individual be appointed as Special Police, Class 3 Law Enforcement Officer, effective immediately:

Marc Fedorchak

12. WHEREAS, the Recreation Committee has scheduled various programs; and

WHEREAS, the following participants were unable to attend;

NOW, THEREFORE, BE IT RESOLVED that the recreation fees be returned to:

| | |
|---|---|
| <p>Heejung Lee (for: <i>Jihoon Yang</i>) 80 Lexington Avenue Cresskill, NJ 07626 Amount: \$220.00</p> | <p>Daphne Shtarker (for: <i>Lior Shtarker</i>) 26 Emerson Street Cresskill, NJ 07626 Amount: \$200.00</p> |
|---|---|

13. WHEREAS, the Borough of Cresskill, pursuant to Ordinance, has created the Cresskill Fire Department EMS; and

WHEREAS, the Fire Department EMS Members are appointed by the Mayor and confirmed by the Council; and

WHEREAS, fulfilling the Membership requirements, as established by the Mayor & Council and the Rules and Regulations of the Cresskill Fire Department; and

WHEREAS, the following individual:

Summer Thompson – Per Diem EMS

has petitioned the Mayor seeking to become Members of the Cresskill Fire Department EMS; and

WHEREAS, each Petition/Application has been submitted to the Board of Fire Officers and approved by same, subject to the final approval and appointment by the Mayor and Council;

NOW, THEREFORE, BE IT RESOLVED, that the above individual is hereby appointed by Mayor Benedict Romeo and each respective appointment is confirmed by the Council, subject to the respective appointee complying with the Cresskill Revised General Ordinances, specifically, §15-1 et seq., specifically §15-5, Requirements of the Firefighter Volunteer Division and Per Diem EMT EMS Division; and

BE IT FURTHER RESOLVED, that a Certified to be True Copy of this Resolution be served upon each Appointee; Fire Chief Christopher Ulshoefer; Dianne Lavin, Administrator; Francesca Maragliano, Borough Clerk

14. WHEREAS, Planning Board applications, soil permit applications and tree escrow were required for several properties; and

WHEREAS, escrow accounts were established for this work; and

WHEREAS, the work has been completed and inspected;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council, Borough of Cresskill, that the following refunds of Developer Escrow accounts be made:

| <u>Account No.</u> | <u>Block</u> | <u>Lots</u> | <u>Applicant</u> | <u>Amount</u> |
|--------------------|--------------|-------------|--|---------------|
| DE-536 | 145.01 | 7 | Walter Keith Brassel 112 11 th Street Cresskill, NJ 07626 | \$ 449.75 |
| DE-567 | 36 | 165 | Roy Landis 73 Magnolia Avenue Cresskill, NJ 07626 | \$ 466.50 |

15. RESOLUTION OF THE BOROUGH OF CRESSKILL COUNTY OF BERGEN [, OPPOSING ASSEMBLY BILL NO. 4/SENATE BILL NO. 50, WHICH PROPOSES TO OVERHALL THE FAIR HOUSING ACT (“FHA”) IN A WAY THAT IMPOSES UNREALISTIC OBLIGATIONS WITH UNREALISTIC DEADLINES BASED UPON ONEROUS STANDARDS.

Mount Laurel II

WHEREAS, in 1983, the Supreme Court decided a landmark case, commonly referred to as Mount Laurel II; and

WHEREAS, Mount Laurel II and its progeny generated substantial litigation culminating in the enactment of the New Jersey Fair Housing Act in 1985 (“FHA”); and

The Fair Housing Act of 1985

WHEREAS, the Legislature enacted the FHA to restore home rule, to bring the fair share numbers back to reality and to reduce the burdens of Mount Laurel compliance; and

WHEREAS, more specifically, the FHA sought *to restore home rule* by imposing a moratorium on the builder’s remedy and by providing an administrative process that municipalities could voluntarily pursue wherein they would be insulated from developers seeking builder’s remedies to try to compel them to capitulate their zoning demands; and

WHEREAS, the FHA sought *to bring the fair share numbers back to reality* by among other things defining the prospective need as the need “based on development and growth which is reasonably likely to occur” and by calling for the fair share to be adjusted to a number lower than the fair share formula generated if the municipality lacked sufficient land to satisfy the obligation generated by the fair share formula; and

WHEREAS, the FHA sought *to reduce the burdens on municipalities* by prohibiting any requirement for municipalities to expend their own resources to comply; and

The New Jersey Council on Affordable Housing

WHEREAS, the FHA created COAH and conferred “primary jurisdiction” on COAH to administer the FHA and to implement the affordable housing policies of our State; and

WHEREAS, all acknowledge -- even Fair Share Housing Center (“FSHC”) -- that COAH functioned well in Rounds 1 and 2; and

WHEREAS, COAH did not adopt valid regulations for Round 3 despite multiple efforts to do so and made no efforts to cure the bottleneck; and

Mount Laurel IV

WHEREAS, in 2015, the Supreme Court issued a decision, commonly referred to as Mount Laurel IV, in response to a motion to transfer the responsibilities of COAH back to the courts in light of COAH’s failure to adopt valid regulations; and

WHEREAS, in Mount Laurel IV, the Supreme Court returned the task of implementing the doctrine back to the Courts because COAH had failed to do its job and made no effort to cure the roadblock when it voted 3-3 on the third iteration of Round 3 regulations; and

WHEREAS, in October 2014, COAH, notwithstanding the foregoing, the Court emphasized that it preferred the administrative remedy created by the FHA to a judicial one and hoped that COAH would be effective so that towns could comply once again through the administrative process created by the FHA; and

WHEREAS, the Court process proved to be far more expensive than the COAH process and was ill-suited for resolving comprehensive planning disputes over affordable housing matters; and

WHEREAS, the Round 3 process was a disaster with judges pressing municipalities to comply before even establishing the obligations with which they must comply; and

WHEREAS, ultimately, on March 8, 2018, after a 41-day trial in Mercer County, Judge Jacobson issued an opinion in which she set forth a fair share methodology; and

WHEREAS, in that trial and in various other instances throughout the state, FSHC took the position that the Statewide obligation should exceed 300,000 units which was required to be addressed between 2015 and 2025; and

WHEREAS, municipalities, through Dr. Robert Powell, presented evidence that, in a best case scenario, the State could only absorb approximately 40,000 affordable units in a ten year period and thus argued that FSHC’s calculations was not grounded in reality; and

WHEREAS, the trial judge, having been constrained by the Supreme Court to use the formula for Round 2 that COAH adopted in 1994, ultimately concluded that the Statewide obligation to be constructed between 2015-2025 was roughly 153,000 units; and

The 354 Settlements with FSHC

WHEREAS, FSHC reports that it entered 354 settlements in Round 3; and

WHEREAS, many municipalities are reeling under the burden of satisfying their obligations under those settlements entered between 2015 and 2023; and

WHEREAS, many of those Round 3 settlements will result in development during the Round 4 period; and

WHEREAS, consequently, many of the 211,000 Certificate of Occupancies anticipated in Round 4 will come from ordinances adopted to satisfy Round 3 obligations, leaving far fewer units that could contribute to satisfy additional Round 4 responsibilities; and

WHEREAS, Round 4 is set to begin on July 1, 2025 and there is no comprehensive analysis on the impacts of the 354 Round 3 settlements and over-zoning described above; and

WHEREAS, the A4/S50 Bill fails to consider the impact from affordable housing projects that were approved during the Third Round, but are still not under construction, as said projects, as well as additional future projects, will impact legitimate public concerns like infrastructure, the environment, schools, traffic, parking and open space; and

WHEREAS, the Round 3 process destroyed the balance achieved by the Fair Housing Act in 1985; and

A-4/S-50

WHEREAS, on December 19, 2023, against the above backdrop, the Housing Committee of the Assembly (a) unveiled the Legislation (A-4) – a detailed 69-page bill that the Chairwoman of the Housing Committee announced had been worked on for a long time; and (b) scheduled the bill for a vote at a hearing scheduled less than 24 hours later; and

WHEREAS, on December 19, 2023, the Administrative Office of the Courts wrote to the Legislature and made clear that it could not structure the bill in the manner set forth in the proposed legislation; and

WHEREAS, notwithstanding the foregoing, on December 20, 2023, the Housing Committee voted the bill out of the Committee and announced that the bill needed to be ready for signing by the Governor before the end of the lame duck session on January 8, 2024; and

WHEREAS, the perception that the Legislature designed the process to adopt the bill before the public had an opportunity to review it and provide meaningful comment was troubling; and

WHEREAS, consequently, the Legislature did not move the Bill through in the lame duck session as had been announced; and

WHEREAS, instead, on January 29, 2024, the Housing Committee of the Assembly met to consider a new version of A-4 and voted to release it out of the Committee; and

WHEREAS, on February 8, 2024, as a result of comments, letters and resolutions challenging this new version of A-4, the Appropriations Committee of the Assembly announced a number of changes to the Bill; and

WHEREAS, one witness likened the summary presented to the public at the February 8, 2024 Appropriations meeting to that of an auctioneer; and

WHEREAS, the Appropriations Committee voted the bill out of the Committee at its February 8, 2024 meeting before the public had an opportunity to even see the changes, much less process their significance and comment on them; and

WHEREAS, the bill has been improved marginally as it has evolved from its initial version in December of 2023 to the current version voted out of the Appropriations Committee of the Assembly on February 8, 2024; and

WHEREAS, the Assembly adopted the Bill on February 12, 2024 with the changes rattled off at the February 8, 2024 Appropriations Committee hearing of the Assembly; and

WHEREAS, despite elimination of some of the gross excesses of the prior version of the bill, the Bill the Committee adopted on February 12, 2024 is still severely flawed; and

WHEREAS, the Bill still creates a judicial entity made up of 3-7 retired Mount Laurel Judges called “The Program”, which, unlike COAH, is not comprised of an equal number of municipal and housing representatives, and is not made up of an equal number of Republicans and Democrats, thereby depriving the citizens of our State of carefully crafting a COAH Board that included a diversity of interests and that was the centerpiece of the FHA adopted in 1985; and

WHEREAS, the Bill still does not require the promulgation of affordable housing obligations, or the adoption of substantive regulations, in a way that utilizes an open and transparent process that COAH used and that gave all interested parties an opportunity to comment and receive COAH’s response to their comments; and

WHEREAS, as detailed below, the bill creates a patently unreasonable responsibility on municipalities by imposing on them an obligation to create a realistic opportunity for satisfaction of its fair share obligation; and

WHEREAS, the current version still details the methodology to be used for determining the fair share numbers of municipalities in Round 4 and in subsequent rounds; and

WHEREAS, the current version still presumes that 40 percent of all new households will qualify as low or moderate; and

WHEREAS, the current version calls for the determination of the prospective need by subtracting the number of households reported in the 2010 Decennial Census from the number of households reported in the 2020 Decennial Census and multiplying that figure by 40 percent; and

WHEREAS, the statewide need number has been calculated to be 84,690 based upon the formula set forth in the bill; and

WHEREAS, the current version of the Bill calls for 84,690 units to be adjusted by the number of conversions and demolitions; and

WHEREAS, the statewide fair share would be increased from 84,690 to 96,780, if the same number of demolitions and conversions used by Judge Jacobson in her formula for Round 3 apply in Round 4; and

WHEREAS, an estimate of the obligation for each municipality can be made if we assume that the same percentage of the regional need in Round 3 for each municipality applies in Round 4; and

WHEREAS, the estimates of the fair share obligations the Bill would generate for Round 4 have been widely distributed and all have had the opportunity to review the estimates and offer any corrections; and

WHEREAS, other than an analysis of the allocation factors by an expert for the American Planning Association (Creigh Rahenkamp) who identified problems with the allocation factors, nobody has reviewed and commented on the estimates set forth above; and

WHEREAS, to the contrary, the Executive Director of Fair Share Housing Center, Inc. testified that he did not have a calculation of the fair share numbers; and

WHEREAS, more importantly, no committee of the Assembly or Senate has identified the fair share obligations municipalities should expect based upon the formula set forth in the bill; and

WHEREAS, the 96,780 fair share number estimated for Round 4 compares to the roughly 211,000 COs issued between 2010 and 2020; and

WHEREAS, the 96,780 fair share number divided by 211,000 COs equals 45.867 percent; and

WHEREAS, all municipalities should be able to cure any violations of the prohibition against exclusionary zoning with inclusionary zoning; and

WHEREAS, traditional inclusionary zoning ordinances generally require no more than 20 percent of the units to be affordable; and

WHEREAS, it is mathematically impossible to satisfy a 46 percent problem with a 20 percent solution and, therefore, the number generated by the statutory formula is patently arbitrary and capricious; and

WHEREAS, although this mathematical error conceptually may have existed COAH utilized its discretion and reduced the statewide number to roughly 5,000 units per year in Rounds 1-2; and

WHEREAS, in addition, COAH's Round 2 regulations had flexible standards, Regional Contribution Agreements (RCAs), an achievable bonus structure, waivers and other flexible standards to further mitigate the problem; and

WHEREAS, had COAH not mitigated the problem, it is likely that the regulations would have been challenged by municipalities; and

WHEREAS, as detailed below, the Bill still fails to account for the enormous burdens on municipalities to comply with their Round 3 obligations before imposing very substantial additional burdens on those 354 municipalities for Round 4; and

WHEREAS, a representative of FSHC testified that it has entered into 354 settlements and that it would furnish those settlements to the Housing Committee, which it has failed to do; and

WHEREAS, at least one witness at the Committee hearings have pressed FSHC to advise how much development will take place in Round 4 as a result of municipalities implementing the 354 settlements reached in Round 3; and

WHEREAS, Adam Gordon on behalf of FSHC has indicated he doesn't know the answer to this question and no committee of the Assembly or Senate has even hinted at what the answer might be; and

WHEREAS, the Bill requires municipalities to create a realistic opportunity for satisfaction of a fair share without taking into account how many affordable units can realistically be achieved through traditional inclusionary zoning; and

WHEREAS, efforts have also been made to ascertain how many affordable units could be realistically achieved through traditional inclusionary zoning by urging the Legislature to conduct a market study since the strength of the housing market will determine the number of market units that can reasonably be anticipated; and

WHEREAS, the Legislature has not furnished a market study in response to the repeated emphasis on the need for one to ascertain how many affordable units could be realistically achieved through traditional inclusionary zoning; and

WHEREAS, as explained below, the bill dilutes the protections to which a municipality is currently entitled; and

WHEREAS, while the Supreme Court established standards to preserve a municipality's immunity in the absence of proof that the municipality is "determined to be constitutionally noncompliant", the proposed bill does not require proof that the municipality is "determined to be constitutionally noncompliant" to warrant stripping the municipality of immunity; and

WHEREAS, the Bill subjects municipalities to litigation not only as they seek approval of their Housing Element and Fair Share Plans, but also even after they secure approval of those plans; and

WHEREAS, more specifically, the Bill provides municipalities a “compliance certification” if the municipality secures approval of its affordable housing plan; however, that certification does not prevent an interested party from “alleging that, despite the issuance of compliance certification, a municipality’s fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are in violation of the Mount Laurel doctrine”; and

WHEREAS, for example, a municipality would have a right to rely on the fair share number that COAH provides under prior laws, under the new bill, a municipality would only have a presumption of validity that the number the DCA provides to the municipality is appropriate and FSHC, a developer or any other interested party could seek to overcome that presumption through litigation; and

WHEREAS, the Bill replaces a straightforward system by which a municipality could secure bonus credits up to a 25 percent cap with a highly complicated system for securing bonuses with many conditions attached to various forms of bonus; and

WHEREAS, the Legislature previously capped the fair share of any municipality down to 1,000 in recognition that any obligation above 1,000 would be “onerous”; the Bill applies the 1,000-unit cap only to a component of the municipality’s fair share -- the prospective need – and authorizes the imposition of an obligation that is onerous; and

WHEREAS, the Bill creates unfair requirements when a municipality secures a Vacant Land Adjustment in that it requires a land-poor municipality to create a realistic opportunity for satisfaction of 25 percent of its unmet need or to “demonstrate why” it is unable to do so; and

WHEREAS, the Bill includes many other provisions and changes to the FHA that are impractical and devoid of any consideration of the burdens created by the statute; and

WHEREAS, as a result of the facts set forth above, Statutory Law that boasts of its effectiveness in reducing costs and litigation will clearly have the exact opposite effect; and

WHEREAS, in addition to all the concerns expressed above, a Bill that so radically changes the affordable housing laws of our State is incomplete and to implement is impractical; and

WHEREAS, the following facts demonstrate, the Legislature has yet to conduct fundamental due diligence before enacting a statute with such broad ramifications;

1. The Legislature has not and cannot inform the public of the fair share obligations the bill, if enacted, would financially impose on the public;
2. The Legislature has not and cannot inform the public of the obligations that municipalities will satisfy in Round 4 from the 354 settlements achieved in Round 3 before creating substantial additional obligations on them for Round 4;
3. The Legislature has not and cannot inform the public of the number of affordable units that can realistically be achieved through traditional inclusionary zoning while imposing obligations on municipalities to create a realistic opportunity for a fair share that far exceeds any number a municipality can realistically achieve through inclusionary zoning; and

WHEREAS, taxes as a result of the pronounced lack of due diligence, the Bill will in all probability dramatically increase and will foster serious overdevelopment creating

unreasonable burdens on our schools, public services, roads, sewer and water infrastructure; and

WHEREAS, the Legislature clearly can and should upgrade the Affordable Housing policies of our State; however, the current Version of A4 is not the answer and the most fundamental diligence can and should be exercised before adopting such a bill.

NOW, THEREFORE, BE IT RESOLVED, that for all of the above reasons, the Council of the Borough of Cresskill, County of Bergen, objects to and opposes Assembly Bill No. 4/Senate Bill No. 50, and requests that the Bill be tabled, re-written and re-introduced in way that imposes achievable obligations and facilitates the ability of the municipality to satisfy its obligations.

NOW, THEREFORE, BE IT RESOLVED, that the Clerk of the Borough of Cresskill, County of Bergen, is hereby directed to forward a certified copy of this Resolution immediately to Governor Phil Murphy, Senate President Nicholas Scutari, Assembly Speaker Craig Coughlin, the sponsors of the Bill in the Senate and in the Assembly, and to the Legislators in the State Assembly and Senate representing our District.

16. BE IT RESOLVED by the Mayor and Council, Borough of Cresskill, that the Police Private Duty Administration fee be increased to \$27.50 per hour effective April 1, 2024.

Motions

17. Appoint Anna Pastore to the Senior Center Board of Trustees for term ending December 31, 2026.
18. Council Member Olmo joined the meeting.

REMARKS FROM MEMBERS OF THE PUBLIC CONCERNING THE CONSENT AGENDA ONLY [Reported by Deputy Borough Clerk Patricia A. McKim.]

19. Council Member Savas asked for an explanation of Resolution #8 (#15). Attorney Diktas said this resolution is being moved throughout Bergen County. The legislature pushed through a lame duck bill at the end of the year that is going to revamp the entire fair share housing act. The bill was pushed through without public comment, and all municipalities could lose their protection. The legislature calls for 80,000 new units throughout the state. Council Member Olmo said the numbers are in proportionately higher to Bergen County than other parts of the state.

No one else wished to be heard.

20. Motion by Council Member Savas and seconded by Council Member Olmo to close the meeting to remarks on agenda items.

Roll Call: Yes – Unanimous Motion adopted.

21. Motion by Council Member Savas and seconded by Council Member Olmo to consider all items marked with an asterisk as a single question.

On the question: The Borough Clerk announced that copies of all items marked with an asterisk have been posted in the Borough Hall and made available to the public.

Roll Call: Yes – Unanimous Motion adopted.

22. Motion by Council Member Savas and seconded by Council Member Olmo to adopt all items with an asterisk as a single question.

Roll Call: Yes – Unanimous Motion adopted.

PRESENTATION OF BILLS

23. Resolution by Council Member Olmo and seconded by Council Member Savas:

(Resolution in full on pages 49A through 49I.)

Roll Call: Yes – Unanimous Resolution adopted.

REMARKS FROM THE PUBLIC FOR THE GOOD AND WELFARE OF THE BOROUGH
[Reported by Deputy Borough Clerk Patricia A. McKim.]

24. No one wished to be heard.

25. Motion at 7:15 P.M. by Council Member Savas and seconded by Council Member Olmo to close the meeting and adjourn.

All in Favor. None Opposed. Motion adopted.

Benedict Romeo
Mayor

Francesca Maragliano
Borough Clerk