

May 16, 2016

Minutes of the public meeting of the Mayor and Council of the Borough of Dunellen held on May 16, 2016.

Council President Kenneth Baudendistel called the meeting to order at 7:30 p.m., after a meeting of the Dunellen Planning Board, and he led the Pledge of Allegiance.

Municipal Clerk William Robins read the Sunshine Statement and called the Roll.

Present: Kenneth Baudendistel, Kevin Bachorik, Jason Cilento and Joseph Petracca

Absent: Mayor Robert J. Seader, Kenneth Bayer and Jeremy Lowder

On the motion of Mr. Cilento and seconded by Mr. Bachorik it was moved to accept the Minutes of May 2, 2016:

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Bachorik and seconded by Mr. Cilento it was moved to accept the Minutes of May 9, 2016:

Yes: Bachorik, Cilento and Petracca

Abstain: Baudendistel [stating that he had been absent from the May 9, 2016, meeting.]

PROCLAMATION

Supporting the *Click It or Ticket* Mobilization of May 23 – June 5, 2016

WHEREAS, there were 560 motor vehicle fatalities in New Jersey in 2015; and

WHEREAS, a large percentage of the motor vehicle occupants killed in traffic crashes were not wearing a seat belt; and

WHEREAS, use of a seat belt remains the most effective way to avoid death or serious injury in a motor vehicle crash; and

WHEREAS, the National Highway Traffic Safety Administration estimates that 135,000 lives were saved by safety belt usage nationally between 1975-2000; and

WHEREAS, the State of New Jersey will participate in the nationwide *Click It or Ticket* seat belt mobilization from May 23 – June 5, 2016 in an effort to raise awareness and increase seat belt usage through a combination of enforcement and education; and

WHEREAS, the Division of Highway Traffic Safety has set a goal of increasing the seat belt usage rate in the state from the current level of 91% to 93%; and

WHEREAS, a further increase in seat belt usage in New Jersey will save lives on our roadways;

NOW THEREFORE BE IT RESOLVED that the Mayor and Council of the Borough of Dunellen declare their support for the *Click It or Ticket* seat belt mobilization both locally and

nationally from May 23 – June 5, 2016 and pledge to increase awareness of the mobilization and the benefits of seat belt use.

May 16, 2016

On the motion of Mr. Bachorik and seconded by Mr. Petracca it was moved to accept the following:

ORDINANCE 2016-08

BOROUGH OF DUNELLEN

The following ORDINANCE is being Introduced for first reading on May 16, 2016. It will be presented for Public Hearing and Adoption on June 6, 2016, at 7:00 p.m. in the Dunellen Borough Municipal Building, 355 North Avenue, Dunellen, New Jersey. Copies of this ordinance will be posted on the Municipal Bulletin Board, and will be available at the Office of the Borough Clerk for any interested members of the public.

BE IT ORDAINED by the Borough Council of the Borough of Dunellen, County of Middlesex, State of New Jersey, that Chapter 103 of the Revised General Code of the Borough of Dunellen, Animals, be amended as follows:

Chapter 103-47. Chickens.

(A) Definitions.

1. Chicken -- a domesticated fowl of the subspecies Gallus gallus domesticus.
2. Mature Chicken -- a chicken which has attained sexual maturity or an age of at least 3 months.
3. Coop – an enclosure, cage or pen, usually with bars or wire, in which chickens are confined.
4. Run – an enclosed area in which chickens are allowed to walk or run about.
5. Roosts – a perch upon which chickens rest at night.
6. Droppings – the excrement of chickens.
7. Predator – an animal that poses a threat to chickens such as hawks, foxes, coyotes, rodents, etc.

(B) Purpose.

1. No person shall raise, keep or harbor any live chickens without first obtaining a permit for that purpose from the Municipal Clerk’s Office, which will issue a permit only after a site inspection

by the Municipal Clerk or the Borough Code Enforcer.

2. The provisions of this ordinance shall not be deemed to authorize the keeping of live chickens or their by-products for sale or preparation of sale. Furthermore, it shall be unlawful to engage in chicken breeding or fertilizer production for commercial purposes.

3. The provisions of this ordinance are intended to regulate the keeping of live chickens only. The keeping of any other types of poultry, including roosters, is strictly forbidden within the borough.

(C) Permits.

1. Application for raising and keeping live chickens will be made through the Municipal Clerk's Office. Only one permit will be issued for any separate residence. There will be no fee for the permit.

2. Permits are issued annually and expire at the end of each calendar year. New permits may be applied for at any time during the year. Permit renewals may be made after December 1st for the following calendar year.

3. The Borough will not approve for issuance a permit, and may revoke existing permits, for the keeping of live chickens in any place that shall be deemed a nuisance to disturb persons of reasonable sensitivity residing in the vicinity of the place where such live chickens are to be kept.

(D) Regulations.

1. All mature chickens shall be confined to fully enclosed coops and runs located outside of and completely apart from any building used wholly or in part for dwelling purposes. Under no circumstances will live chickens be permitted to be kept at food or eating establishments.

2. No live chicken shall be permitted to fly or run at large. Such action is deemed to be a nuisance and dangerous to the public health and safety.

3. Each animal subject to this ordinance shall be free from sickness or disease. If upon investigation by the County Health Department there exists reasonable cause to question the health of any animal, the Borough shall have the authority to require, after notice to the owner, an examination by a doctor of veterinary medicine. This examination shall be at the expense of the owner.

4. There will be a maximum of eight (8) mature chickens for each permit issued.

(E) Maintenance.

1. The coop shall not exceed 100 square feet.

2. Any run associated with the coop shall be included within the 100 square foot limitation.

3. Where practicable, chicken coops and runs shall be located in the rear yard of the property; in no circumstances shall said coops and runs be permitted in the front yard of any

property. Moreover, the entirety of any chicken coop and run shall be placed closer to the dwelling on the lot in question than to the dwelling(s) on any adjoining lot(s).

4. No chicken coop and run shall be erected, used or located closer than five (5) feet to any property line.
5. The coop shall be dry and well ventilated, with windows so placed, if possible, as to admit sunlight.
6. The coop shall have a floor impervious to moisture and be waterproof.
7. The coop shall be whitewashed or painted therein.
8. The coop, including perches and nests, shall be cleaned regularly for the health and safety of the chickens and as a precaution against offensive odors.
9. Drinking fountains in the area where the coop is located shall be cleaned and supplied at all times with clean water.
10. The yard in the area where the coop is located shall be clean and free from odors.
11. The coop and run shall be constructed of such materials as to prevent predators (ex., coyotes, fox, bear, raccoons, etc.) and/or rodents from entering therein.
12. Chicken manure must be bagged and disposed of with household garbage or composted on site. All stored manure must be completely contained in a waterproof container. Any compost using chicken manure is required to be produced in an enclosed backyard composter.

(F) Severability Clause.

If any provision of this ordinance is prohibited by law or judged by a court to be unlawful, void or unenforceable, that provision shall be severed from this ordinance and rendered ineffective without modifying the remaining provisions, and shall not affect any other circumstances of or the validity or enforcement of this ordinance.

(G) Enforcement.

The provisions of this article shall be enforced by the Police Department, Code Enforcement Official, Construction Officer, or Health Officer of the Borough of Dunellen.

(H) Violations and penalties.

Any person(s) who is found in violation of the provisions of this article shall be subject to a fine not to exceed \$500.00.

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Petracca and seconded by Mr. Cilento it was moved to accept the following:

Ordinance 2016-11

NOTICE OF PENDING BOND ORDINANCE AND SUMMARY

The bond ordinance, the summary terms of which are included herein, is being introduced for first reading at a meeting of the governing body of the Borough of Dunellen, in the County of Middlesex, State of New Jersey, on May 16, 2016. It will be further considered for final passage, after public hearing thereon, at a meeting of the governing body to be held at the Dunellen Borough Council Chambers, in the Borough on June 6, 2016 at 7:00 o'clock p.m. During the week prior to and up to and including the date of such meeting, copies of the full bond ordinance will be available at no cost and during regular business hours at the Clerk's office for the members of the general public who shall request the same. The summary of the terms of such bond ordinance follows:

Title: BOND ORDINANCE PROVIDING FOR VARIOUS CAPITAL IMPROVEMENTS IN AND BY THE BOROUGH OF DUNELLEN, IN THE COUNTY OF MIDDLESEX, NEW JERSEY, APPROPRIATING \$118,250 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$112,340 BONDS OR NOTES OF THE BOROUGH TO FINANCE PART OF THE COST THEREOF

Purposes:

<u>Purpose</u>	<u>Appropriation & Estimated Cost</u>	<u>Estimated Maximum Amount of Bonds & Notes</u>	<u>Period of Usefulness</u>
a) <u>Department of Public Works</u> 1) The acquisition of an asphalt hot box, including all related costs and expenditures incidental thereto. 2) The acquisition of a mason dump truck with plow, including all related costs and expenditures incidental thereto.	\$35,440 \$55,210	\$33,670 \$52,450	15 years 5 years
b) <u>Fire Department</u> 1) The acquisition of turnout gear, including all related costs and expenditures	\$9,200	\$8,740	5 years

incidental thereto.				
2) Repairs to furnaces, including all work and materials necessary therefor and incidental thereto.	\$9,200		\$8,740	15 years
c) <u>Information Technology</u>				
Server upgrades and peripherals, including all work and materials necessary therefor and incidental thereto and further including all related costs and expenditures incidental thereto.	<u>\$9,200</u>		<u>\$8,740</u>	5 years
Total:	<u>\$118,250</u>		<u>\$112,340</u>	

Appropriation: \$118,250
 Bonds/Notes Authorized: \$112,340
 Grant Appropriated: N/A
 Section 20 Costs: \$15,441
 Useful Life: 8.77 years

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Petracca and seconded by Mr. Bachorik it was moved to accept the following:

Ordinance 2016-12

NOTICE OF PENDING BOND ORDINANCE AND SUMMARY

The bond ordinance, the summary terms of which are included herein, is being introduced for first reading at a meeting of the governing body of the Borough of Dunellen, in the County of Middlesex, State of New Jersey, on May 16, 2016. It will be further considered for final passage, after public hearing thereon, at a meeting of the governing body to be held at the Dunellen Borough Council Chambers, in the Borough on June 6, 2016 at 7:00 o'clock p.m. During the week prior to and up to and including the date of such meeting, copies of the full bond ordinance will be available at no cost and during regular business hours at the Clerk's office for the members of the general

public who shall request the same. The summary of the terms of such bond ordinance follows:

Title: BOND ORDINANCE PROVIDING FOR PARKING LOT IMPROVEMENTS IN AND BY THE BOROUGH OF DUNELLEN, IN THE COUNTY OF MIDDLESEX, NEW JERSEY, APPROPRIATING \$415,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$395,238 BONDS OR NOTES OF THE BOROUGH TO FINANCE PART OF THE COST THEREOF

Purpose: To provide a loan to the Parking Authority of the Borough of Dunellen to provide for various parking improvements to the existing surface parking lot located on Block 86, Lots 3, 4 and 4.03 on the Tax Maps of the Borough, located southeast of the corner of North Avenue and South Washington Avenue, including all work and materials necessary therefor and incidental thereto

Appropriation: \$415,000
Bonds/Notes Authorized: \$395,238
Grant Appropriated: N/A
Section 20 Costs: \$55,000
Useful Life: 10 years

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Petracca and seconded by Mr. Cilento it was moved to accept the following:

ORDINANCE 2016-05

BOROUGH OF DUNELLEN

The following Restated and Amended Dunellen Downtown Redevelopment Plan, Phase I, was Introduced for first reading on April 18, 2016. It was presented to the Dunellen Planning Board for review and response on April 25, 2016. It is now being presented for Public Hearing and Adoption on May 16, 2016 at 7:00 p.m. in the Dunellen Borough Municipal Building, 355 North Avenue, Dunellen, New Jersey. Notice has been given in advance of the date for this Public Hearing and Adoption. Copies of this ordinance have been posted on the Municipal Bulletin Board, and have been available at the Office of the Borough Clerk for any interested members of the public.

This ordinance restates and amends the Dunellen Downtown Redevelopment Plan, Phase One, that was adopted in February 2003 and revised on July 12, 2004, with further Amendments in June 2011, August 2013, November 2014, and February 2016.

Sandy Galacio from Windels, Marx, explained to the Council the latest changes in the Redevelopment Plan, how it was presented to the Dunellen Planning Board which conducted a hearing on April 25, 2016 and provided comments on the proposed Restated Plan. Mr. Galacio has consolidated these comments in a document

titled: "Amended and Restated Dunellen Downtown Redevelopment Plan, Phase One, Report of the Dunellen Planning Board to Borough Council, May 13, 2016" [attached at end of the Minutes].

The Dunellen Planning Board at its meeting earlier this evening passed a resolution adopting this report and appending to it a copy of their minutes of the April 25, 2016, meeting, which has been circulated to Council members along with a copy of this report. Mr. Galacio noted that the published Plan included three suggested changes made by the Planning Board: 1) the population data was updated; 2) the reference to Dandé Plastic building on North Avenue was updated; 3) and a reference to the Technical Review Board was eliminated. He has reviewed other comments made by the Planning Board which deal with private property; public use of certain amenities of the project; some deletions that some members of the Planning Board wished to see put back into the Plan. One in particular was the retention of the two-story "Art Color Building." He noted that the redevelop does not believe it is feasible to retain that building as part of the project. Finally, a reference to maintaining a "railroad town environment" was deleted and he noted that that requirement is still present in other sections of the Plan. Other sections were deleted as they did not set an objective standard: ex., "cookie cutter design" in Section 8.6.3(h) and 8.6.5(a) "parking is encouraged to be as inconspicuous as possible." Jennifer Beahm, CME Planner, agreed that subjective language ought to be removed as being ambiguous in that what might be "inconspicuous to one person might not be inconspicuous to another person." Mr. Galacio noted that the Council subcommittee would have a chance to vet and approve the concept plan and the redeveloper would be required to build according to the concept plan. Ms. Beahm commented that the concept plan would be detailed with plans and materials.

Mr. Baudendistel noted that many if not all of the comments made by Planning Board members were made by individual members and were not collective recommendations made by the Planning Board. Therefore the Council will take the comments for consideration as it reviews the redeveloper's plan during the concept plan phase.

At this point, Council President Baudendistel opened the meeting for public comment on the ordinance.

Tom D'Amico, 133 Third Street, asked if the Planning Board would have a chance to review the concept plan prior to it being adopted by the Borough Council? Mr. Bruder indicated not. Mr. D'Amico asked, even an informal review? Mr. Baudendistel stated that is a possibility.

Robert Krause, 414 North Washington Avenue, also asked for an informal review of the concept plan at the appropriate time.

This portion was closed.

At this point, Mr. Baudendistel summarized why the Council was adopting the Restated Redevelopment Plan without accepting any of the comments put forth by the Planning Board and thus without change: comments from the Planning Board on April 25th were not unanimous comments, they were opinions of certain individuals on the Planning Board; valid opinions in their eyes and the Council will take them under consideration. He also stated that he and the Council would rely on the comments made by the CME Planner and our redevelopment attorney as noted earlier. All in the Council concurred.

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Petracca and seconded by Mr. Bachorik it was moved to accept the following:

ORDINANCE 2016-06
BOROUGH OF DUNELLEN

The following ordinance was Introduced for first reading on April 18, 2016. A second reading and public hearing is now being held at 7:00 p.m. in the Dunellen Borough Municipal Building, 355 North Avenue, Dunellen, New Jersey on the 16th day of May, 2016, and copies of this Ordinance have been posted on the public bulletin board prior to the date for second reading and final passage and copies of this Ordinance have been available at the Office of the Borough Clerk for any interested members of the public.

AN ORDINANCE AUTHORIZING A SPECIAL EMERGENCY APPROPRIATION OF \$85,000.00 FOR THE PREPARATION AND EXECUTION OF APPROVED TAX MAPS IN THE BOROUGH OF DUNELLEN, IN THE COUNTY OF MIDDLESEX, STATE OF NEW JERSEY, FOR THE USE OF THE LOCAL ASSESSOR OF THE BOROUGH.

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF DUNELLEN, IN THE COUNTY OF MIDDLESEX, STATE OF NEW JERSEY, AS FOLLOWS:

Section 1. Pursuant to the Local Budget Law of New Jersey, and in particular N.J.S.A. 40A:4-53, a special emergency appropriation in the amount of \$85,000.00 is hereby authorized and made for the purpose of the preparation of tax maps by the Borough of Dunellen, in the County of Middlesex, New Jersey.

Section 2. The Borough is hereby authorized to finance such appropriation from surplus funds available or by issuing special emergency notes from time to time in accordance with the provisions of N.J.S.A. 40A:4-55, all as shall be determined by and pursuant to a resolution or resolutions of the Borough to be hereafter adopted.

Section 3. In accordance with the requirements of N.J.S.A. 40A:4-53, a copy of this ordinance as adopted shall be filed with the Director of Local Government Services in the department of Community Affairs of the State of New Jersey.

Section 4. This ordinance shall take effect after publication after final adoption, as provided by law.

At this point, Council President Baudendistel opened the meeting for public comment on the ordinance. No one from the public spoke on this ordinance. Mr. Krause raised a point about 2016-05, but was reminded that that public portion had closed. This portion was closed.

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Petracca and seconded by Mr. Baudendistel it was moved to accept the following:

ORDINANCE 2016-07

BOROUGH OF DUNELLEN

The following DUNELLEN SALARY ORDINANCE was Introduced for first reading on May 2, 2016. It is now being presented for Public Hearing and Adoption on May 16, 2016, at 7:00 p.m. in the Dunellen Borough Municipal Building, 355 North Avenue, Dunellen, New Jersey. Copies of this ordinance have been posted on the Municipal Bulletin Board, and have been available at the Office of the Borough Clerk for any interested members of the public.

The following are base salaries, without longevity or benefits:

<u>Step</u>	<u>Minimum</u>	<u>Maximum</u>
11	\$100,000.00	\$140,000.00
10	\$70,000.00	\$101,000.00
9	\$60,000.00	\$69,999.00
8	\$45,000.00	\$61,999.00
7	\$35,000.00	\$53,000.00
6	\$30,000.00	\$44,999.00
5	\$20,000.00	\$35,000.00
4	\$15,000.00	\$25,000.00
3	\$8,000.00	\$19,999.00
2	\$2,000.00	\$12,000.00
1	\$1,000.00	\$4,999.00

<u>Full-Time Positions</u>	<u>Step</u>
Chief of Police	11
Administrator/Clerk	10
DPW Supervisor	10

Court Administrator	8
Finance/Payroll Clerk	7
Recreation Director	6
Deputy Clerk/Registrar	5
Registrar	5
Clerk's Office Admin. Assistant	5
Deputy Court Administrator	5
Violations Clerk, Municipal Court	5

Part-Time Salary Positions

Municipal Attorney	7
Construction Code Official	6
Municipal Judge	5
Chief Financial Officer	5
Public Works Superintendent	3
Tax Collector	3
Tax Assessor	3
Municipal Prosecutor	3
Property Maintenance/Code Enf.	3
Sewer Inspector	3
Public Defender	2
Office of Emergency Management	2
Sub Code Official (Electrical, Fire, Plumbing)	2
Sign Ordinance Enforcement Officer	1

Part Time – Hourly

	<u>Minimum</u>	<u>Maximum</u>
Sewer Inspector - Additional Hourly	\$30.00	\$48.00
Substitute Deputy Clerk (Court)	\$25.00	\$35.00
Interpreter	\$20.00	\$25.00
Acting Recreation Director	\$20.00	\$25.00
Planning Board Secretary	\$12.00	\$20.00
Tax Clerk	\$12.00	\$18.00
Head School Crossing Guard	\$12.00	\$16.00
Police Administrative Assistant	\$12.00	\$18.00
Violations Clerk (Court)	\$10.00	\$15.00
Laborer	\$10.00	\$14.00
Senior Citizen Van Driver	\$10.00	\$14.00
School Crossing Guard	\$10.00	\$14.00
Janitor	\$9.00	\$13.00
Clerk's Administrative Assistant	\$9.00	\$14.00

Part-Time - Monthly/Meeting

Planning Board Recording Secretary	\$275/meeting	\$300/meeting
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Elected Officials

Mayor	\$5,000 annually
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Council President \$2,800 annually
Council Member \$2,500 annually

At this point, Council President Baudendistel opened the meeting for public comment on the ordinance. No one from the public spoke. This portion was closed.

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Bachorik and seconded by Mr. Cilento it was moved to accept the following:

BOROUGH OF DUNELLEN

ORDINANCE 2016-09

AN ORDINANCE TO ENACT THE BOROUGH'S THIRD ROUND HOUSING PLAN ELEMENT AND FAIR SHARE PLAN CONSISTENT WITH THE TERMS OF A SETTLEMENT AGREEMENT REACHED BETWEEN THE BOROUGH OF DUNELLEN AND THE FAIR SHARE HOUSING CENTER REGARDING COMPLIANCE WITH THE BOROUGH'S THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS IN ACCORDANCE WITH IN RE: N.J.A.C. 5:96 AND 5:97, 221 N.J. 1, 30 (2015).

The following Ordinance to Enact the Borough's Third Round Housing Plan Element and Fair Share Plan was Introduced for first reading on May 9, 2016, and by Resolution was forwarded to the Dunellen Planning Board for review and response at a meeting held on May 16, 2016, at 7:00 pm. It is now being presented for Public Hearing and Adoption on May 16, 2016 at 7:30 p.m. in the Dunellen Borough Municipal Building, 355 North Avenue, Dunellen, New Jersey. Copies of this ordinance have been posted on the Municipal Bulletin Board, and have been available at the Office of the Borough Clerk for any interested members of the public, as well as being uploaded to the Borough's Web site: http://www.dunellen-nj.gov/affordable_housing/

Section 1. Affordable Housing Obligation

- (a) This Ordinance is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.
- (b) The Borough of Dunellen Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways the Borough of Dunellen shall address its fair share for low- and moderate-income housing as documented in the Housing Element and outlined in the terms of the settlement agreement between the Borough and Fair Share Housing Center (FSHC) in the Matter of the Application of the Borough of Dunellen, County of Middlesex, Docket No. MID-L3947-15 (the "settlement agreement").

- (c) This Ordinance implements the Borough's Fair Share Plan and addresses the requirements of the Court and the terms of the settlement agreement.
- (d) The Borough of Dunellen shall track the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan shall be available to the public at the Borough of Dunellen Municipal Building, Borough Clerk's Office, 355 North Avenue, Dunellen, New Jersey.

Section 2. Definitions

The following terms when used in this Ordinance shall have the meanings given in this Section:

"Accessory apartment" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this ordinance, N.J.A.C. 5:91, N.J.A.C. 5:93 and N.J.A.C. 5:80-26.1 et seq.

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

"Affordability average" means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

"Affordable" means, a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:93-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

"Affordable development" means a housing development all or a portion of which consists of restricted units.

"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

"Affordable housing program(s)" means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

"Affordable unit" means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:93-5, and/or funded through an affordable housing trust fund.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80 percent of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

“Assisted living residence” means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregating dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

“Deficient housing unit” means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

“Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median household income.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

“Market-rate units” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable county, as adopted annually by the Department.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Non-exempt sale” means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor’s deed to a class A beneficiary and the transfer of ownership by court order.

“Random selection process” means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

“Regional asset limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by the Department’s adopted Regional Income Limits published annually by the Department.

“Rehabilitation” means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

“Rent” means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

“Restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

“Very low-income household” means a household with a total gross annual household income equal to 30 percent or less of the median household income.

“Very low-income unit” means a restricted unit that is affordable to a very low-income household.

“Weatherization” means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

Section 3. Affordable Housing Programs

The Borough of Dunellen will use the following mechanisms to satisfy its affordable housing obligation:

- (a) A Rehabilitation program.

1. The Borough of Dunellen will continue to participate in Middlesex County's *Housing First* rehabilitation program to renovate a minimum of twelve (12) deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
2. Both owner occupied and renter occupied units shall be eligible for rehabilitation funds through the County *Housing First* program. Information and procedures governing the *Housing First* program can be found at: <http://www.co.middlesex.nj.us/Government/Departments/CS/Pages/Housing/Housing%20and%20Social%20Services.aspx> or by writing to **Coming home of Middlesex County, Inc.**, c/o Eileen O'Donnell, Executive Director, 75 Bayard Street, 2nd Floor, New Brunswick, NJ 08901.
3. All rehabilitated rental units shall remain affordable to low- and moderate-income households for a period of ten (10) years (the control period). Owner-occupied units shall remain affordable to low- and moderate-income households for a period of six (6) years. For owner-occupied units, the control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.
4. The Borough of Dunellen shall dedicate a minimum of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
5. The Borough of Dunellen shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the Borough.
6. The Borough of Dunellen shall designate, subject to the approval of the Court, one or more Administrative Agents to administer the rehabilitation program in accordance with N.J.A.C. 5:91 and N.J.A.C. 5:93. The Administrative Agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of the Court. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
7. Units in a rehabilitation program shall be exempt from N.J.A.C. 5:93-9 and the Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
 - i. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:93-9 and UHAC.
 - ii. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:93-9 and UHAC.

- iii. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:93-9.
- iv. Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:93-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

(b) Inclusionary Zoning.

1. To implement the fair share plan in a manner consistent with the terms of the settlement agreement, ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning shall be permitted on the following properties consistent with the provisions of the Amended and Restated Dunellen Downtown Redevelopment Plan, Phase I, the Borough of Dunellen’s Housing Plan Element and Fair Share Plan, and the terms of the settlement agreement:
 - i. Block 85, Lot 1 shall require residential development at a presumptive maximum gross density of twenty-one (21) units per acre with a presumptive minimum affordable housing set-aside of fifteen percent (15%) of the total number of units in the development. A minimum of fifty-eight (58) affordable non-age-restricted rental dwelling units shall be provided on the site.
 - ii. Block 70, Lots 13 and 13.01 shall permit residential development at a presumptive maximum gross density of twenty (20) units per acre. A presumptive minimum affordable housing set-aside of fifteen percent (15%) of the total number of rental units in the development shall be required for any residential development. A presumptive minimum affordable housing set-aside of twenty percent (20%) of the total number of for-sale units in the development shall be required for any residential development.
 - iii. Block 69, Lots 1, 1.01, 2, 2.01 and 3 shall permit residential development at a presumptive maximum gross density of twenty (20) units per acre. A presumptive minimum affordable housing set-aside of fifteen percent (15%) of the total number of rental units in the development shall be required for any residential development. A presumptive minimum affordable housing set-aside of twenty percent (20%) of the total number of for-sale units in the development shall be required for any residential development.
 - iv. Residential development at a presumptive maximum gross density of twenty (20) units per acre with minimum affordable housing set-asides of fifteen percent (15%) of the total number of rental units and twenty percent (20%) of the total number of for-sale units in a development shall be permitted on the following properties identified as “Remainder Parcels” in the Amended and Restated Dunellen Downtown Redevelopment Plan, Phase I:

<u>Block</u> <u>Number</u>	<u>Lot Number</u>
1	14, 15.01, 15.02, 16, 17, 18, 19, 20, 21, 22, 23

<u>Block Number</u>	<u>Lot Number</u>
2	10, 11.01, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20
32	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14.01, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 24.01, 25, 26, 27, 28
33	14, 14.01, 15, 16, 17, 18, 19, 20, 21, 22, 23
34	10.01, 22, 23, 24, 24.01, 25, 26, 27.01, 27.02, 28, 28.02, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 38.01
48	16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28
49	25, 26, 27.01, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39.01, 39.02, 40, 41, 43, 44
50	1, 2, 3, 4, 5, 6
51	1, 2 & 3 - NJ Transit property
65	1
66	1, 2, 3, 4, 5, 6.01, 7, 8, 9, 10.01, 10.02, 11, 12, 13, 14, 15.01, 15.02, 16, 17, 17.01, 18, 19, 20
86	1, 2, 3, 4, 4.02, 4.03, and 5

2. Phasing. Inclusionary developments shall be subject to the following schedule, except where an alternate phasing schedule has been incorporated into a development or redevelopment agreement:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
0	10
25+1	50
75	75
90	100

3. Design. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.
4. Payments-in-lieu and off-site construction. The standards for the collection of Payments-in-Lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with N.J.A.C. 5:93-8.
5. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.

Section 4. New Construction

The following general guidelines apply to all newly constructed developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

(a) Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
2. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
3. Thirteen percent (13%) of all units shall be designated as very-low income households, with at least fifty percent (50%) of all very-low income units being available to families. Very-low income units shall be considered low-income units for the purposes of evaluating compliance with the required low/moderate income unit splits, bedroom distribution, and phasing requirements of this ordinance
4. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - i. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
 - ii. At least 30 percent of all low- and moderate-income units shall be two bedroom units;
 - iii. At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
 - iv. The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
5. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

(b) Accessibility Requirements:

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - i. An adaptable toilet and bathing facility on the first floor;
 - ii. An adaptable kitchen on the first floor;
 - iii. An interior accessible route of travel on the first floor;

- iv. An interior accessible route of travel shall not be required between stories within an individual unit;
- v. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
- vi. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Borough of Dunellen has collected funds from the developer sufficient to make ten percent (10%) of the adaptable entrances in the development accessible:
 - A. Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - B. To this end, the builder of restricted units shall deposit funds within the Borough of Dunellen's affordable housing trust fund sufficient to install accessible entrances in ten percent (10%) of the affordable units that have been constructed with adaptable entrances.
 - C. The funds deposited under paragraph B. above shall be used by the Borough of Dunellen for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - D. The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Dunellen.
 - E. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Dunellen's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
 - F. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

(c) Maximum Rents and Sales Prices

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC utilizing the regional income limits established by the New Jersey Department of Community Affairs (DCA) or other agency as required by the Court.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income,

and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.

3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
 - i. At least thirteen percent (13%) of all low- and moderate-income dwelling units shall be affordable to households earning no more than 30 percent of median income.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household;
 - iii. A two-bedroom unit shall be affordable to a three-person household;
 - iv. A three-bedroom unit shall be affordable to a four and one-half person household; and
 - v. A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household; and
 - iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that

the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
10. The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.
11. **Utilities.** Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

Section 5. Affirmative Marketing Requirements

- (a) The Borough of Dunellen shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Department, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (b) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the Department Housing Region 3 and covers the period of deed restriction.
- (c) *Optional.* The affirmative marketing plan shall provide a regional preference for all households that live and/or work in the Department Housing Region 3 comprised of Hunterdon, Middlesex, and Somerset Counties
- (d) The Administrative Agent designated by the Borough of Dunellen shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- (e) In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as

budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

- (f) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- (g) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Borough of Dunellen.

Section 6. Occupancy Standards

- (a) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
 - 1. Provide an occupant for each bedroom;
 - 2. Provide children of different sex with separate bedrooms; and
 - 3. Prevent more than two persons from occupying a single bedroom.
- (b) Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

Section 7. Control Periods for Restricted Ownership Units and Enforcement Mechanisms

- (a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance until the Borough of Dunellen elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (e) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

- (f) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

Section 8. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- (a) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- (b) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (c) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- (d) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

Section 9. Buyer Income Eligibility

- (a) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

Section 10. Limitations on indebtedness secured by ownership unit; subordination

- (a) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable

resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C.5:80-26.6(b).

Section 11. Control Periods for Restricted Rental Units

- (a) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance until the Borough of Dunellen elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Middlesex. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (c) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit;
 - 2. Sale or other voluntary transfer of the ownership of the unit; or
 - 3. The entry and enforcement of any judgment of foreclosure.

Section 12. Price Restrictions for Rental Units; Leases

- (a) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- (b) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- (c) Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

Section 13. Tenant Income Eligibility

- (a) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
 - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.

3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

Section 14. Administration

- (a) The position of Municipal Housing Liaison (MHL) for the Borough of Dunellen is established by this ordinance. The Borough Council shall make the actual appointment of the MHL by means of a resolution.
1. The MHL must be either a full-time or part-time employee of Borough of Dunellen.
 2. The person appointed as the MHL must be reported to the Department.
 3. The MHL must meet all the requirements for qualifications, including initial and periodic training.
 4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Dunellen, including the following responsibilities which may not be contracted out to the Administrative Agent:
 - i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;

- ii. The implementation of the Affirmative Marketing Plan and affordability controls.
 - iii. When applicable, supervising any contracting Administrative Agent.
 - iv. Monitoring the status of all restricted units in the Borough of Dunellen's Fair Share Plan;
 - v. Compiling, verifying and submitting annual reports as required;
 - vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
 - vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Department.
- (b) The Borough of Dunellen shall designate by resolution of the Borough Council, subject to the approval of the Department, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:91, N.J.A.C. 5:93 and UHAC.
- (c) An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- (d) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
- 1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Department;
 - 2. Affirmative Marketing;
 - 2. Household Certification;
 - 3. Affordability Controls;
 - 4. Records retention;
 - 5. Resale and re-rental;
 - 6. Processing requests from unit owners; and
 - 7. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
 - 8. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

Section 15. Enforcement of Affordable Housing Regulations

- (a) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a

requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

- (b) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - i. A fine of not more than \$10,000.00 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - ii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Dunellen Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - iii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
 2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- (c) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- (d) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of

violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- (e) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (f) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (g) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (h) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

Section 16. Appeals

Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Commissioner of the Department.

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This ordinance shall take effect upon passage and publication as provided by law.

At this point, Council President Baudendistel opened the meeting for public comment on the ordinance. No one from the public spoke. This portion was closed.

Ms. Beahm noted that the Dunellen Planning Board reviewed this ordinance and considered it under Section 26 of the Municipal Land Use Law on May 16, 2016, and made a determination that said ordinance is consistent with the Master Plan.

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Bachorik and seconded by Mr. Cilento it was moved to accept the following:

**BOROUGH OF DUNELLEN
ORDINANCE 2016-10**

The following Ordinance to Amend Ordinance 09-09, Development Fee Ordinance, was Introduced for first reading on May 9, 2016, and by Resolution was forwarded to the Dunellen Planning Board for review and response at a meeting to be held on May 16, 2016, at 7:00 pm. It is now being presented for Public Hearing and Adoption on May 16, 2016 at 7:30 p.m. in the Dunellen Borough Municipal Building, 355 North Avenue, Dunellen, New Jersey. Copies of this ordinance have been posted on the Municipal Bulletin Board, and have been available at the Office of the Borough Clerk for any interested members of the public, as well as being uploaded to the Borough’s Web site: http://www.dunellen-nj.gov/affordable_housing/

AN ORDINANCE AMENDING ORDINANCE NUMBER 09-09 (“DEVELOPMENT FEE ORDINANCE”) TO ENSURE CONSISTENCY WITH THE TERMS OF A SETTLEMENT AGREEMENT REACHED BETWEEN THE BOROUGH OF DUNELLEN AND THE FAIR SHARE HOUSING CENTER REGARDING COMPLIANCE WITH THE BOROUGH’S THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS IN ACCORDANCE WITH IN RE: N.J.A.C. 5:96 AND 5:97, 221 N.J. 1, 30 (2015).

BE IT ORDAINED by the Mayor and Council of the Borough of Dunellen, in the County of Middlesex and the State of New Jersey, as follows:

1. Purpose

- a) In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- b) Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- c) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:93-8.

2. Basic requirements

- a) This ordinance shall not be effective until approved by COAH and/or a court of competent jurisdiction pursuant to N.J.A.C. 5:91-15.
- b) The Borough of Dunellen shall not spend development fees until COAH and/or a court of competent jurisdiction has approved a plan for spending such fees in conformance with N.J.A.C. 5:93-8.9.

3. Definitions

- a) The following terms, as used in this ordinance, shall have the following meanings:
 - i. "**Affordable housing development**" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

- ii. "**COAH**" or the "**Council**" means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.
- iii. "**Development fee**" means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.
- iv. "**Developer**" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.
- v. "**Equalized assessed value**" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).
- vi. "**Green building strategies**" means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low- maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

4. Residential Development Fees

- a) Imposed fees
 - i. Within the RA district, RB district, and the area governed by the Dunellen Downtown Redevelopment Plan, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half percent of the equalized assessed value for residential development provided no increased density is permitted and that the proposed density complies with applicable standards of the Dunellen land use ordinances.
 - ii. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of six percent of the equalized assessed value for each additional unit in excess of applicable ordinance standards that may be realized. However, if the zoning on a site has changed during the two-year period immediately preceding the filing of

such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and a half percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

- b) Eligible exactions, ineligible exactions and exemptions for residential development
- i. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
 - ii. Any development within an Area in Need of Redevelopment or Rehabilitation, where a redevelopment agreement that includes specific requirements related to the provision of affordable housing has been executed by the Borough and the designated redeveloper, shall be exempt from development fees.
 - iii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
 - iv. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
 - v. Developers of one and two family homes shall be exempt from paying a development fee under the following circumstances: Residential structures demolished and replaced as a result of a natural disaster,

including fire, Green buildings, and property converted from commercial to residential use, creating additional housing.

5. **Non-residential Development Fees**

- a) Imposed fees
 - i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
 - ii. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
 - iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
- b) Eligible exactions, ineligible exactions and exemptions for non-residential development
 - i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
 - ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - iii. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption"

Form. Any exemption claimed by a developer shall be substantiated by that developer.

- iv. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
- v. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Dunellen as a lien against the real property of the owner.

6. Collection procedures

- a) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- b) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The Developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d) Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- e) The construction official responsible for the issuance of a final certificate of

occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

- f) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g) Should the Borough of Dunellen fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- h) Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- i) Appeal of development fees
 - 1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by The Borough of Dunellen. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
 - 2) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by The Borough of Dunellen or by the State, as the case may be. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

7. Affordable Housing trust fund

- a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Municipal Clerk/Municipal Housing Liaison for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 1. payments in lieu of on-site construction of affordable units;
 2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development handicapped accessible;
 3. rental income from municipally operated units;
 4. repayments from affordable housing program loans;
 5. recapture funds;
 6. proceeds from the sale of affordable units; and
 7. any other funds collected in connection with the Borough of Dunellen's affordable housing program.
- c) Within seven days from the opening of the trust fund account, The Borough of Dunellen shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8.16.
- d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH or a court of competent jurisdiction.

8. Use of funds

- a) The expenditure of all funds shall conform to a spending plan approved by COAH or a court of competent jurisdiction. Funds deposited in the housing trust fund may be used for any activity approved by COAH or the court to address the Borough of Dunellen's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state

standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:93-8.6 and specified in the approved spending plan.

- b) Funds shall not be expended to reimburse the Borough of Dunellen for past housing activities.

- c) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
 - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
 - ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.

 - iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

- d) The Borough of Dunellen may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:93-8.16.

- e) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with monitoring requirements. Legal or other fees

related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

9. Monitoring

- a) The Borough of Dunellen shall complete and return to COAH, or a court of competent jurisdiction as required, all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Dunellen's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH or a court of competent jurisdiction. All monitoring reports shall be completed on forms designed by COAH or a court of competent jurisdiction.

10. Ongoing collection of fees

- a) The ability for the Borough of Dunellen to impose, collect and expend development fees shall expire with its substantive certification unless the Borough of Dunellen has filed an adopted Housing Element and Fair Share Plan with COAH or a court of competent jurisdiction, has petitioned for substantive certification, and has received COAH's or the court's approval of its development fee ordinance. If the Borough of Dunellen fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). The Borough of Dunellen shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall the Borough of Dunellen retroactively impose a development fee on such a development. The Borough of Dunellen shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

At this point, Council President Baudendistel opened the meeting for public comment on the ordinance. No one from the public spoke. This portion was closed.

Ms. Beahm noted that the Dunellen Planning Board reviewed this ordinance and considered it under Section 26 of the Municipal Land Use Law on May 16, 2016, and made a determination that said ordinance is consistent with the Master Plan.

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Bachorik and seconded by Mr. Cilento it was moved to accept the following:

05-16-2016: #1

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

The bills, as per the attached list, are hereby authorized for payment.

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Bachorik and seconded by Mr. Baudendistel it was moved to accept the following:

05-16-2016: #2

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

DUNELLEN BOROUGH COUNCIL
RESOLUTION ADOPTING THE HOUSING PLAN ELEMENT AND FAIR SHARE PLAN
DATED MAY 6, 2016

WHEREAS, the Planning Board of the Borough of Dunellen, Middlesex County, State of New Jersey, adopted the Housing Element of the Master Plan, dated May 6, 2016, on May 16, 2016; and

WHEREAS, a true copy of the resolution of the Planning Board adopting the Housing Element is attached pursuant to N.J.A.C. 5:91-2.2(a)2; and

NOW THEREFORE BE IT RESOLVED that the Governing Body of the Borough of Dunellen, Middlesex County, State of New Jersey, hereby endorses the Housing Element and Fair Share Plan as adopted by the Borough of Dunellen Planning Board; and

BE IT FURTHER RESOLVED that the Governing Body of the Borough of Dunellen, pursuant to the provisions of N.J.S.A. 52:27D-301 et seq. and In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, submits this Housing Plan Element and Fair Share Plan to the Court for a determination of constitutional compliance; and

BE IT FURTHER RESOLVED that a list of names and addresses for all owners of sites in the Housing Element and Fair Share Plan has been included within the Plan; and

BE IT FURTHER RESOLVED that notice of this submission for consideration at a fairness and compliance hearing shall be published in a newspaper of countywide circulation and shall be provided to interested parties to provide an opportunity to be heard. A copy of this resolution, the adopted Housing Element and Fair Share Plan and all supporting documentation shall be made available for public inspection at the Borough of Dunellen's municipal clerk's office located at 355 North Avenue, Dunellen, New Jersey 08812, during the hours of 8:30 a.m and 4:30 p.m. on Monday through Friday for a period of 45 days following the date of publication of the legal notice.

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Baudendistel and seconded by Mr. Cilento it was moved to accept the following:

05-16-2016: #3

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

Permission is granted to the Dunellen Education Foundation to hold their 2016 5-kilometer run in the area around the Dunellen High School and Lincoln Middle School on Saturday, September 24, 2016. The Foundation will make all appropriate arrangements with the Dunellen Police Department and the Dunellen Department of Public Works regarding street closings and safety issues.

Furthermore, the Foundation is granted permission to place a sign in Washington Park advertising this event from Friday, September 9th to Sunday, September 25, 2016.

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Bachorik and seconded by Mr. Cilento it was moved to accept the following:

05-16-2016: #4

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

The resignation of Joseph T. Vargo as a part-time employee in the Dunellen Department of Public Works is accepted, effective May 6, 2016.

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Baudendistel and seconded by Mr. Petracca it was moved to accept the following:

05-16-2016: #5

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

Maria Wolfenden is hereby hired as a School Crossing Guard, effective May 2, 2016, at an hourly salary of \$11.50. This is a position without benefits.

Constance Stanziano is hereby hired as a Substitute School Crossing Guard, effective May 2, 2016, at an hourly salary of \$10.00. This is a position without benefits.

Kathleen Meyer is hereby hired as a Substitute School Crossing Guard, effective May 6, 2016, at an hourly salary of \$10.00. This is a position without benefits.

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Baudendistel and seconded by Mr. Bachorik it was moved to accept the following:

Resolution 05-16-2016: #6

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

Resolution of the Borough of Dunellen, County of Middlesex, State of New Jersey, ratifying the Emergency Repair of a sewer line break under North Washington Avenue, in an amount not to exceed \$196,744.00.

WHEREAS, an emergency exists due to a sewer line break under North Washington Avenue, Dunellen, NJ; and

WHEREAS, pursuant to N.J.S.A.40A:11-6 a contract may be negotiated or awarded for a contracting unit without public advertising for bids and bidding therefor, when an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services; and

WHEREAS, immediate action was required for the repair of a sewer line break under North Washington Avenue, Dunellen, NJ, as failure to repair immediately would have a profoundly negative effect upon the health, safety or welfare of the people of Dunellen; and

WHEREAS, the Mayor, Borough Administrator and Chief Financial Officer request the Borough Council ratify said purchase in an amount not to exceed \$196,744.00 from B&W Construction of South River, NJ; and

WHEREAS, the Borough of Dunellen, pursuant to N.J.S.A.40A:11-6 may by resolution and without advertising for bids, purchase any goods or services pursuant to the emergency; and

WHEREAS, the Chief Financial Officer has certified that sufficient funding exists for this purpose in an amount not to exceed \$196,744.00.00.

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Baudendistel and seconded by Mr. Petracca it was moved to accept the following:

05-16-2016: #7

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

2016 Summer hours for employees of the Municipal Clerk's Office, Tax Office, and Municipal Court will be as follows, for the term May 27, 2016 to September 2, 2016:

Monday through Thursday – 8:30 a.m. to 4:30 p.m., with a one hour lunch break

Friday – 8:30 a.m. to 1:00 p.m.

Yes: Baudendistel, Bachorik, Cilento and Petracca

On the motion of Mr. Bachorik and seconded by Mr. Petracca it was moved to accept the following:

05-16-2016: #8

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

RESOLUTION AUTHORIZING THE ISSUANCE OF \$85,000 SPECIAL EMERGENCY NOTES FOR THE PREPARATION OF TAX MAPS IN AND BY THE BOROUGH OF DUNELLEN, IN THE COUNTY OF MIDDLESEX, NEW JERSEY.

BE IT RESOLVED BY THE BOROUGH COUNCIL OF THE BOROUGH OF DUNELLEN, IN THE COUNTY OF MIDDLESEX, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. An ordinance of the Borough of Dunellen, in the County of Middlesex, New Jersey (the "Borough"), authorizing a special emergency appropriation in the amount of

\$85,000 for the preparation of tax maps has been finally adopted on May 16, 2016 and a copy thereof has been filed with the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey (the "Director").

Section 2. (a) In order to finance the special emergency appropriation described in Section 1 of this resolution, the Borough is hereby authorized to borrow the sum of \$85,000 and to issue special emergency notes therefor in accordance with the Local Budget Law of the State of New Jersey (N.J.S.A. 40A:4-55).

(b) The special emergency notes authorized by this resolution may be issued in amounts and denominations not exceeding in the aggregate the amount of special emergency notes authorized herein, as determined by the chief financial officer of the Borough pursuant to this resolution.

(c) The Borough may finance the special emergency appropriation from surplus funds available or may borrow money in the manner prescribed herein. Where an appropriation is financed from surplus funds available, at least one-fifth of the amount thereof shall be included in each annual budget until the appropriation has been fully provided for.

Section 3. The following matters in connection with the special emergency notes are hereby determined:

(a) All special emergency notes issued hereunder and any renewals thereof shall mature at such time as may be determined by the chief financial officer within the limitations of the Local Budget Law, provided however, that at least one-fifth of all such special emergency notes and the renewals thereof shall mature and be paid in each year so that all special emergency notes and renewals shall have matured and have been paid not later than the last day of the fifth year following the date of adoption of this resolution;

(b) All special emergency notes issued hereunder shall bear interest at such rate or rates as may be determined by the chief financial officer; and

(c) The special emergency notes shall be in the form determined by the chief financial officer and the chief financial officer's signature upon the special emergency notes shall be conclusive as to such determination.

Section 4. The chief financial officer is hereby authorized and directed to determine all matters in connection with the special emergency notes not determined by this or a subsequent resolution and the chief financial officer's signature upon the special emergency notes shall be conclusive as to such determination.

Section 5. The chief financial officer is hereby authorized to sell the special emergency notes from time to time at public or private sale in such amounts as such officer may determine at not less than par and to deliver the same from time to time to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof and payment therefor.

Section 6. Any instrument issued pursuant to this resolution shall be a general obligation of the Borough. The full faith and credit of the Borough are hereby pledged to the punctual payment of the principal of and the interest on the obligations and, unless otherwise paid or payment provided for, an amount sufficient for such payment shall be inserted in the budget and a tax sufficient to provide for the payment thereof shall be levied and collected.

Section 7. The chief financial officer is authorized and directed to report in writing to this governing body at the meeting next succeeding the date when any sale or delivery of the special emergency notes pursuant to this resolution is made, such report to include the amount,

description, interest rate and maturity of the special emergency notes sold, the price obtained and the name of the purchaser.

Section 8. (a) Solely for purposes of complying with Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"), and provided that an issue of special emergency notes authorized by this resolution is not exempt from the Rule, for so long as an issue of special emergency notes of the Borough remains outstanding (other than an issue of special emergency notes which has been wholly defeased), the Borough shall provide, in a timely manner not in excess of ten business days after the occurrence of the event, to the Municipal Securities Rulemaking Board, notice of any of the following events with respect to the special emergency notes:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (7) Modifications to rights of security holders, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the securities, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the obligated person;
- (13) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

For the purposes of the event identified in subparagraph (12) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

(b) The covenants and undertakings contained in this Section 8 are made for the benefit of the holders or beneficial owners of the special emergency notes issued under this resolution.

(c) The chief financial officer shall determine, in consultation with Bond Counsel, the application of the Rule or the exemption from the Rule for each issue of special emergency notes prior to their offering. Such chief financial officer is hereby authorized to enter into written contracts or undertaking to implement this resolution and is further authorized to amend such contracts or undertakings as needed to comply with the Rule or upon the advice of Bond Counsel.

(d) In the event that the Borough fails to comply with this resolution or the written contract or undertaking, the Borough shall not be liable for monetary damages, remedy of the holders or beneficial owners of the notes being hereby specifically limited to specific performance of the covenants contained in this resolution or the written contract or undertaking.

Section 9. A copy of this resolution as adopted shall be filed with the Director.

Section 10. This resolution shall take effect immediately.

Yes: Baudendistel, Bachorik, Cilento and Petracca

REPORTS:

Mr. Petracca: no report.

Mr. Bachorik: no report.

Mr. Cilento: 1) reported on a possible leak in the Field House which is being investigated; 2) Memorial Day Parade gathers at 9:30 am, marches at 10:00 am. He introduced Chris Washburn who presented to the Council an idea for Rugby, to be played in Columbia Park. Flag Rugby, boy and girl, gathering on Saturdays for regional play. He asks to use the football field, mid-June to July. Sign up has begun and they already have 15 registered. Ron Safar noted that the football field is going to be seeded within the next two weeks. General discussion on logistics of use of the field and care of the fields.

Mr. Baudendistel: no report.

Ron Safar: reported on the break in the North Washington Avenue sewer pipe: about 320 linear feet will need to be replaced. Mr. Olsen noted that some funding could come from existing bond ordinances and capital surplus. There will be additional expenses from signs, police, and CME.

PUBLIC PORTION

No one from the public spoke.

On the motion of Mr. Bachorik and seconded by Mr. Cilento it was moved to accept the following:

05-16-2016: #9

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

The Dunellen Borough Council Meeting of May 16, 2016 is adjourned.

Yes: Baudendistel, Bachorik, Cilento and Petracca