

# Echoes~Sentinel



State Superior Court Judge Michael E. Hubner hears testimony from Township Planner Jessica Caldwell and Township Attorney Jack Pidgeon during a Friday morning, Dec. 15, fairness hearing at Morris County Courthouse in Morristown.

## Court gives go-ahead to Long Hill affordable housing plan

- By ALEX PARKER-MAGYAR Editor
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**LONG HILL TWP.** - The township is a step closer to providing 54 to 72 affordable housing units following a judge's Friday, Dec. 15, ruling.

[State Superior Court](#) Judge Michael E. Hubner ruled Long Hill's [settlement agreement](#) with [Fair Share Housing Center](#) is fair to people with low and moderate incomes. He also granted Long Hill preliminary compliance in satisfying its third-round affordable housing obligation mandated by the state. Long Hill will be up for final approval in or around June, 2018, following the township's amendment of its affordable housing element and fair share plan.

Long Hill's immunity from builders remedy lawsuits is extended through the June hearing. Final approval would mean immunity into 2025.

A handful of residents attended the roughly hour-long fairness hearing Friday morning at Morris County Courthouse in Morristown. Charles Arentowicz and Kathy O’Leary, both of Millington, expressed concerns about contamination at the Tifa site, among other matters surrounding the [settlement](#).

The agreement would require Long Hill to provide zoning for some 360 total housing units across four sites. Under third round affordable housing rules, 15 percent of rental units must be set aside as affordable housing, or 20 percent of for-sale units. If all 360 units were to be rentals, 54 units would be set aside as affordable. If all are for sale, 72 would be set aside as affordable.

The township would provide zoning for:

- 138 total units at the Tifa property on Division Avenue in Millington
- 94 total units on 7.87 acres on the eastern side of Warren Avenue near the PSE&G right-of-way
- 66 total units in the the Valley Road Redevelopment Area, seven lots totaling 4.4 acres on both sides of Valley Road near the Main Avenue intersection
- 62 total units on a 5.15-acre vacant lot located at 617-6121 Valley Road, Gillette

Township Planner Jessica Caldwell noted the listed unit count for the Valley Road Redevelopment Area is a “conservative estimate,” as a redevelopment plan has not yet been approved.

### *‘History Of Compliance’*

Joshua Bauers, a Fair Share Housing Center attorney, noted the advocacy group agreed to reduce Long Hill’s “prospective need” by 30 percent in the settlement.

“The reason for that,” Bauers told Judge Hubner, “is to avoid having to go through what would probably end up being a long, drawn-out trial on the methodology to figure out what exactly the fair share obligations are, and in return get the planning done sooner. We’re getting the planning done now rather than going through the expense of a drawn-out trial, and here and in many other municipalities getting affordable housing constructed a lot sooner.”

Bauers cited several reasons why the advocacy group agreed to settle its litigation with the township. He listed the large amount of existing affordable housing in Long Hill, including Lounsbury Meadow.

He said the township has also constructed a number of accessory apartments, “which I think is noteworthy as a lot of municipalities in the prior round and in their initial third-round plans would all throw 10 accessory apartment units into their plan just so they could claim 10 credits – and 30 years later, not one of them was ever constructed.

“That’s not the case here. Long Hill has actually been successful at getting accessory apartment units constructed, and that’s relatively unusual.”

Judge Hubner would later note the township has a “history of compliance, of being a municipality that has been available to the reality of providing housing for the region’s low- and moderate-income families.”

Bauers added it took a while to reach a settlement, “but not because Long Hill was recalcitrant in some way. We were at all times meeting and trying to find ways to come to an agreement and figure out exactly how to get this done.”

He added the settlement also ensures Long Hill will provide adequate sewer capacity and work to lift a voluntary sewer ban which has been in place since 2000.

### *Sewer Talk*

The two sides agreed to a “durational adjustment,” meaning the housing obligation would be deferred until the sewer system can accommodate the new units. The agreement binds Long Hill to provide the necessary sewer capacity for the new units by July 1, 2020. If adequate sewer capacity is not provided by that date, Fair Share can nullify the deal, stripping the township of its immunity.

An attorney representing Prism Capital Partners, the owner and prospective developer of Tifa site, was present at the hearing.

The attorney, Henry Kent-Smith, requested the township provide biannual progress updates to the court over at least the next two years regarding its acquisition of state Department of Environmental Protection (DEP) permits to upgrade the sewer treatment plant.

“It is my client’s hope that we would have capacity in line and ready to go so that my client could proceed with the redevelopment of their property,” said Kent-Smith. “We just want to push this process along as quickly as we can.”

The request was not granted, as Judge Hubner said Prism and the township could work it out between themselves. Bauers added an update could be provided in court in six months anyway when the parties return for final approval.

### *Public Process*

Both Arentowicz and O’Leary live in the immediate area around the Tifa site. Arentowicz said he wanted it on the record that there is a “major concern” about the presence of asbestos on the property beyond the capped asbestos landfill.

Arentowicz has filed an Open Public Records Act (OPRA) request for a recent DEP report on contamination at the site and what Prism must do to adequately remediate the contamination. This newspaper previously filed a separate OPRA request for the same 400-page document, and anticipated receipt within a few days of the fairness hearing.

O’Leary requested the property be removed from the settlement, “until we can have an opportunity to review that report and to see what is is that we as the residents are going to be potentially exposed to.”

She said the most recent Environmental Protection Agency (EPA) survey of the site found arsenic, chromium and benzene, in addition to asbestos.

Township Attorney Jack Pidgeon said any construction on the property would be closely regulated by the DEP, and Prism is aware remediation is required. Judge Hubner said there are public processes ahead in which those concerns will be investigated, but “there is nothing happening here and now that is prejudicial

to your concerns going forward, and your need to know certain information regarding the environmental concern.”

He added later: “Environment issues are difficult issues, but God knows in the state of New Jersey they are regulated. Those regulations provide an ample framework within which to engage in the yin and the yang of what is possible and what is not.”

O’Leary asked what becomes of the obligation to accommodate 54 or 72 new affordable units if nothing is built by the end of the third round in 2025.

Caldwell, the planner, said the obligation is “not going anywhere, and we have to answer it.”

“It’s a plan, we will work diligently to implement it,” she said. “If it doesn’t work for some reason then we would have to go back and find other places for those units.”

Arentowicz concluded his remarks by noting residents had no say in which sites were identified as suitable for affordable housing. Pidgeon responded the lack of public involvement to this point is a result of municipalities having to negotiate behind closed doors with Fair Share Housing Center. He noted the Planning Board and Township Committee will hold public hearings on each of the four sites.

Judge Hubner said the process must be fair, open and accessible.

“I am sure that the process that lies ahead will provide a very adequate opportunity for the interests of certain citizens of Long Hill that have spoken here today to be furthered in the sense that information will be available, opportunity will be more than available to make comments, to bring forth evidence, to even – if folks feel strongly – have their interest not only represented by counsel, but perhaps be reviewed by their own experts so that things can continue to be presented appropriately,” he said.

*Thank You,*

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