

TOWNSHIP OF DENVILLE

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MAYOR'S STATEMENT - DECEMBER 5, 2017

On this evening's agenda, there are two resolutions before the Township Council for consideration to approve settlement agreements with two developers. The first is for a 65 unit Glenmont Common Development on Casterline Road and the second is for 114 unit Toll Brothers development on Franklin Avenue.

Before commenting on the specifics of the settlement agreements pending before the Township Council this evening, I would like to comment on the current state of affordable housing in the State of New Jersey.

In a phrase, "the system is broken."

Due to the State of New Jersey's inability or perhaps even unwillingness to develop an acceptable formula to assign municipalities their affordable housing obligation, the courts have had to take over what should have been an administrative process. Our affordable housing obligation is now being determined as part of a legal process in the courts. And, to say the deck is stacked against municipalities in the process, is an enormous understatement.

I've been asked dozens of times by residents during the past several months, including at Council Meetings, "if we don't know what our affordable housing number is, then why are we entertaining and negotiating with developers?" It really is a great question and I wholeheartedly agree that on a logical basis it makes absolutely no sense to attempt to satisfy a speculative affordable

housing obligation. Let me repeat, I agree with you that it makes absolutely no sense. In fact, it throws all smart growth municipal planning principals out the window and will undoubtedly have a significant impact on our community and communities around the State of New Jersey.

So, why then? The answer is as simple as it is absurd, to protect our community from the greater evil. What is that greater evil? It is the builder's remedy lawsuit.

As stated by various members of the Township Council at previous meetings, digging our heels in and saying "no" to new development or simply not participating in the court process at all is not an option.

As Township Attorney John Jansen so eloquently stated at the last public meeting, "we have immunity [from the builder's remedy lawsuit]; however, that immunity is very fragile."

Therefore, none of the Council Members nor I are happy about the position we've been put in. However, as we've stated, our obligation is to protect the municipality as a whole.

If we simply say "no" to Toll Brothers or Glenmont Commons, it will most likely result in the Township losing its immunity and being immediately subject to builder's remedy lawsuits. To magnify the issue, our immunity would not only be lost for the project we say "no" to but for any developer who wants to build in Denville. There are several interveners in the Declaratory Judgment Action that we have and continue to say "no" to because their development projects are ill-advised and would detrimentally impact the fragile environmental protections that we have worked so long and hard for. These interveners, who we intend to continue to oppose for the public good of the community as a whole, will also be able to file builder's remedy lawsuits against the Township. If we lose our immunity, it would be open season on Denville by all of these developers and Denville would lose control over its own destiny.

In the research we have done and reviewing what has occurred in other municipalities, including right here in Morris County, the consequences would be devastating for our community. In a builder's remedy lawsuit, densities would be higher and the Township would lose virtually all input and control into the planning process.

I have used the analogy this broken system has placed us into a position where we are attempting to responsibly plan for the future of our community while having a loaded gun pointed at our head.

With that as our backdrop, it is true that we have been working with some of the developers, including Station Village, who presented here this evening, as well as Glenmont Commons and Toll Brothers. Our aim has always been to minimize the impact on our community, our school system and our infrastructure while recognizing our constitutional obligation. We have effectively negotiated with all three developers to bring densities lower, we have negotiated to ensure a maximum number of 1 and 2 bedroom units and a minimum of 3 bedroom units in order to reduce the impact on our school system and we have worked collectively with the developers to ensure the products being presented are architecturally attractive.

If we say "no" or do nothing and lose our immunity, all of these projects will certainly be larger and have a greater distribution of 3- and 4-bedrooms. Along with the greater density, we are not guaranteed that the buffers or environmental protections we have worked on so diligently with these specific developers to secure will be provided. As an example, Glenmont Commons has submitted two site plans to the court, including a monstrous 230 unit apartment complex which I am sure would be more profitable for the developer to construct but I think we can all agree would be devastating to our community and our community's infrastructure.

Sure, we could fight every single development proposal, but history in other municipalities has demonstrated that we would then not be able to obtain the concessions that we have obtained nor the level of quality of the development that we have been able to negotiate. And when I refer to other municipalities, I am referring to municipality's right here in Morris County who has been or are currently in the midst of builder's remedy lawsuits. The densities sought by developers in these builders remedy lawsuits are 2 to 3 times greater than the densities we have negotiated.

Furthermore, as I stated, if immunity is lost, it is lost for the entire community. The other developers who we have opposed in court will also be able to file builder's remedy lawsuits against the Township. Again, we would have little ability to effectively defend ourselves. This is the point that weighs heavy

upon my mind and I can only assume that of the members of the Township Council. If we say 'no' to these relatively modest developments, we expose the entire Township to a much greater development.

One final point I would like to touch upon is the inclusionary issue that has been discussed and debated at length. I am a strong proponent of inclusionary developments in which the affordable and the market units and intermingled not only with the same development but among the various buildings within a development. Having a 100% affordable development often lends itself to stereotyping and unequal treatment. I never want any resident of our community to be singled out and identified as economically disadvantaged simply by stating where they live.

We've been effective and even proactive in achieving our affordable housing obligations thru inclusionary developments and even enter the current cycle with a small surplus in affordable housing credits. Even a developer of million dollar plus homes was required to build inclusionary affordable housing on site. This is something I am proud of and something we should be proud of as a community.

I sincerely appreciate the members of the public who have come out to the meetings and offered their input and suggestions. If there was a magic bullet to address this situation we would certainly employ it. We have historically and will continue to maximize our use of credits for group homes, maximize our credits for age-restricted affordable housing for seniors and maximize our credits for rehabilitating existing homes of income qualified individuals. We will also continue to purchase additional open space in Denville in order to maintain the character of our community and the active and passive recreational opportunities that our great Township offers to all residents.

In closing, I support the settlement agreements on the agenda this evening and encourage the members of the Township Council to approve these agreements as I believe the best protect the specific neighborhoods where they are located as well as the community as a whole for even larger and more consequential development.

Thank you.