

BOROUGH OF TOTOWA

MINUTES OF THE MAYOR AND COUNCIL

December 8, 2020

Due to the COVID-19 (coronavirus) pandemic and the Governor's Executive Order 107, in accordance with N.J.S.A. 10:4-8(b), this meeting was not open to the public, but was held by virtual means on Zoom.

PRESENT: Mayor John Coiro, presiding, Council President Lou D'Angelo, Councilwoman Debra Andriani, Councilman Anthony Picarelli, Councilman William Bucher, Councilman John Capo, Councilwoman Lisa Palazzo, Municipal Clerk Joseph Wassel and Municipal Attorney Kristin Corrado.

ABSENT: None.

Mayor John Coiro called the meeting to order and asked the Municipal Clerk to call the roll.

Municipal Clerk Wassel recited the Prayer of the Meeting followed with the Pledge of Allegiance to the Flag with the public participating.

Mayor Coiro asked the Clerk to read the statement of the meeting.

Municipal Clerk Wassel read the following statement: This meeting of the Mayor and Council held on this day is being held in accordance with Chapter 231, P.L. 1975 of the State of New Jersey as amended. The agenda for this meeting has been prepared and distributed to the Mayor and Council and a copy has been on file in the Office of the Municipal Clerk.

Mayor Coiro asked if any members of the Council, the Municipal Clerk or the Municipal Attorney wished to address the Council.

There were no reports.

CITIZENS HEARD:

There were no citizens who wished to be heard and Mayor Coiro announced that we have not received any emailed questions pertaining to the public portion of the meeting through 7:30 p.m.

There was a motion by Councilman D'Angelo, seconded by Councilwoman Andriani to approve the Minutes of the Mayor and Council for the meeting of November 24, 2020. On roll call vote, all members of the Council present voted in the affirmative. Councilman Capo abstained from the voting.

COMMITTEE ON FINANCE:

There was a motion by Councilman Picarelli, seconded by Councilman D'Angelo to approve Resolution No. 2020-25 for the payment of bills. On roll call vote, all members of the Council present voted in the affirmative.

There was a motion by Councilman Picarelli, seconded by Councilman D'Angelo to approve Resolution No. 2020-26 Authorizing Transfer Of 2020 Budget Appropriations. On roll call vote, all members of the Council present voted in the affirmative.

There was a motion by Councilman Picarelli, seconded by Councilman D'Angelo to adopt the following resolution to effectuate the redemption of Tax Sale Certificate #18000001 for 503 Preakness Avenue, Block 7, Lot 1.02. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION

Tax Sale Certificate Number 18000001
Block 7, Lot 1.02
Property: 503 Preakness Avenue, Totowa, New Jersey 07512
Owner: John Gerhold

WHEREAS, at the Municipal Tax Sale on October 25, 2018, a lien was sold on Block 7, Lot 1.02; and

WHEREAS, this lien known as Tax Sale Certificate Number 18000001, was sold to US Bank as Cust for Actlien for a 0% redemption fee and a premium of \$20,100.00; and

WHEREAS, John Gerhold, the owner of the property, has effected redemption of Tax Sale Certificate Number 18000001 in the amount of \$33,682.02 as of December 8, 2020.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby authorize the Treasurer to issue a check in the amount of \$33,682.02 payable to US Bank as Cust for Actlien for the redemption of Tax Sale Certificate Number 18000001.

BE IT FURTHER RESOLVED, that the Mayor and Council do hereby authorize the Treasurer to issue a check in the amount of \$20,100.00 (premium) to the aforementioned Lien Holder.

There was a motion by Councilman Picarelli, seconded by Councilman D'Angelo to adopt the following Resolution To Acknowledge Receipt Of And Accept The 2019 Audit Corrective Action Plan. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 127-2020

RESOLUTION TO ACKNOWLEDGE RECEIPT OF AND ACCEPT THE 2019 AUDIT CORRECTIVE ACTION PLAN

WHEREAS, by Resolution No. 20-2020 dated January 1, 2020, the Mayor and Council of the Borough of Totowa authorized the firm of Lerch, Vinci & Higgins, LLP, 17-17 Route 208, Fair Lawn, New Jersey 07410, to serve as the Municipal Auditor for the Borough of Totowa; and

WHEREAS, the professional services to be provided by the Municipal Auditor include but are not limited to auditing the financial statements for the Borough of Totowa; preparing the unaudited annual financial statement; review and certification of the annual budget; and preparing the annual debt statement and performing all general auditing services as needed; and

WHEREAS, the Municipal Auditor has completed the Borough of Totowa, Passaic County, New Jersey Report of Audit Year Ended December 31, 2019; and

WHEREAS, the Municipal Clerk and Chief Financial Officer/Treasurer prepared the 2019 Audit Corrective Action Plan based on the recommendations listed in the Audit Report, a copy of which is on file in the office of the Borough of Totowa Municipal Clerk; and

WHEREAS, copies of the 2019 Audit Corrective Action Plan have been distributed to the Mayor and Council of the Borough of Totowa and the Recommendations and 2019 Audit Corrective Action Plan have been forwarded to all affected personnel.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby acknowledge receipt of and accept the 2019 Audit Corrective Action Plan as prepared by the Municipal Clerk and Chief Financial Officer/Treasurer.

There was a motion by Councilman Picarelli, seconded by Councilman D'Angelo to adopt the following Resolution Authorizing Cancellation Of Outstanding Checks. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 128-2020

RESOLUTION AUTHORIZING CANCELLATION OF OUTSTANDING CHECKS

WHEREAS, there exists numerous, old, outstanding checks on the bank reconciliations of the General and Net Payroll bank accounts; and

WHEREAS, the old, outstanding checks have been investigated by the Chief Financial Officer/Treasurer and it has been determined that these old, outstanding checks should be cancelled.

NOW, THEREFORE, BE IT RESOVLED, by the Governing Body of the Borough of Totowa that the following old, outstanding checks in the amount of \$5,527.56 in the General and Net Payroll bank accounts be and the same are hereby cancelled.

<u>Bank Account</u>	<u>Amount Cancelled</u>
General Account	\$ 2,836.00
Net Payroll Account	<u>2,691.56</u>
	<u>\$ 5,527.56</u> (A)

(A) A detailed listing of the outstanding checks to be cancelled will be retained on file in the Office of the Borough Clerk.

There was a motion by Councilman Picarelli, seconded by Councilman D'Angelo to adopt the following Resolution Authorizing Settlement Of The 2018, 2019 & 2020 Tax Appeals Entitled Amerco Real Estate Company V. Borough Of Totowa. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 129-2020

RESOLUTION AUTHORIZING SETTLEMENT OF THE 2018, 2019 & 2020
TAX APPEALS ENTITLED AMERCO REAL ESTATE COMPANY
V. BOROUGH OF TOTOWA

WHEREAS, there have been appeals of the real property tax assessments for the stated tax years; and

WHEREAS, each Block and Lot listed therein was assessed at the amount stated therein; and

WHEREAS, the proposed Stipulation of Settlement, a copy of which is incorporated herein as if set forth at length, has been reviewed and recommended by the Borough Tax Assessor and Borough Tax Expert; and

WHEREAS, the settlement of these matters on the attached list are in the best interest of the Borough of Totowa.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Totowa, New Jersey, as follows:

1. The Borough's Tax Appeal Attorney, Raymond B. Reddin, Esq. is authorized to execute the Stipulation of Settlement on behalf of the Borough of Totowa with respect to the tax appeals on the attached list which are currently pending in the Tax Court of New Jersey.
2. All municipal officials are hereby authorized to take whatever action may be necessary to implement the terms of this Resolution and authorizes the Special Tax Counsel to enter into the Stipulation of Settlement as provided by Taxpayer.

There was a motion by Councilman Picarelli, seconded by Councilman D'Angelo to adopt the following Resolution Authorizing Purchase Of Various Items Through State, County And Educational Services Commission Cooperative Contracts. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 130-2020

RESOLUTION AUTHORIZING PURCHASE OF VARIOUS ITEMS
THROUGH STATE, COUNTY AND EDUCATIONAL SERVICES COMMISSION
COOPERATIVE CONTRACTS

WHEREAS, the different Borough of Totowa Departments have requisitioned various goods and services for 2020 pursuant to the following State Contracts, Passaic County Cooperative Contracts, Morris County Cooperative Contracts, Bergen County Cooperative Contracts and/or Educational Services Commission of New Jersey Cooperative Contracts; and

<u>VENDOR</u>	<u>STATE/PCC/MCC/BCC/ESCNJ CONTRACT</u>
Broadview Networks	State Contract
Northeast Communications	Morris County Cooperative Contract
Rachles/Michele's Oil Company	State Contract
Rio Supply, Inc.	Morris County Cooperative Contract

WHEREAS, the Mayor and Council of the Borough of Totowa is desirous of approving said purchases in accordance with the terms of the various State Contracts, County Contracts and Educational Services Commission of New Jersey Contracts; and

WHEREAS, the Mayor and Council is also desirous of authorizing these purchases from the State Contracts, County Contracts and Educational Services Commission of New Jersey Contracts throughout calendar year 2020, subject to appropriate procurement controls and availability of funds; and

WHEREAS, the Finance and Administration Committee has considered this matter and recommended this resolution to the Mayor and Council for adoption.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Totowa that it hereby authorizes the purchase of the goods and/or services described above in accordance with the terms of the applicable State Contracts, County Contracts or Educational Services Commission of New Jersey Contracts.

BE IT FURTHER RESOLVED, that the Municipal Clerk and all other necessary officers and employees be and hereby are authorized and directed to take such further actions and sign such documents as are necessary to effectuate the purpose of this resolution, including but not limited to issuance of an appropriate Purchase Order.

There was a motion by Councilman Picarelli, seconded by Councilman D'Angelo to adopt the following Resolution Approving Disposal Services For Vegetative Waste Recycling. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 131-2020

RESOLUTION APPROVING DISPOSAL SERVICES FOR
VEGETATIVE WASTE RECYCLING

WHEREAS, the Mayor and Council of the Borough of Totowa need to dispose of the Borough's residential and municipal vegetative waste at a facility that is licensed and permitted by the State of New Jersey Department of Environmental Protection ("DEP"); and

WHEREAS, the Borough of Totowa solicits proposals from licensed and permitted disposal facilities that will dispose of vegetative materials including but not limited to leaves, brush, tree parts, stumps, wood chips and grass; and

WHEREAS, Environmental Renewal, LLC, 27 Andrews Drive, Woodland Park, New Jersey 07424 has submitted a proposal to dispose of vegetative waste at their facility in accordance with their Municipal Rate Schedule, a copy of which is on file in the office of the Borough of Totowa Municipal Clerk; and

WHEREAS, these services were utilized during the year 2020; and

WHEREAS, pursuant to the applicable New Jersey State laws, the authorization of this service may be authorized as an exception to public bidding in accordance with the Local Public Contract Law as set forth in N.J.S.A 40A:11-5, et seq.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby authorize the Borough of Totowa to utilize Environmental Renewal, LLC for the disposal of vegetative waste for the Borough of Totowa in accordance with the Fee Schedule set forth in their proposal.

BE IT FURTHER RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby authorize the Municipal Clerk to execute any and all necessary instruments relating thereto.

There was a motion by Councilman Picarelli, seconded by Councilman D'Angelo to add the following item to the agenda. On roll call vote, all members of the Council present voted in the affirmative.

There was a motion by Councilman Picarelli, seconded by Councilman D'Angelo to adopt the following Resolution Providing For The Insertion Of A Special Item Of Revenue In The Budget Pursuant To N.J.S.A. 40A:4-87 (Ch. 159, P.L. 148) – Public And Private Revenues Offset by Appropriations – County Of Passaic Coronavirus Aid, Relief And Economic Security Act (CARES Act) Fund. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 132-2020

RESOLUTION PROVIDING FOR THE INSERTION OF A SPECIAL ITEM OF REVENUE IN THE BUDGET PURSUANT TO N.J.S.A. 40A:4-87 (CH. 159, P.L. 148)
– PUBLIC AND PRIVATE REVENUES OFFSET BY APPROPRIATIONS –
COUNTY OF PASSAIC CORONAVIRUS AID, RELIEF AND
ECONOMIC SECURITY ACT (CARES ACT) FUND

WHEREAS, N.J.S.A. 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any municipality when such item shall have been made available by law and the amount thereof was not determined at the time of the adoption of the budget; and

WHEREAS, said Director may also approve the insertion of an item of appropriation of equal amount; and

WHEREAS, the Borough of Totowa has been awarded an additional grant in the amount of \$203,300 from the County of Passaic CARES Act Fund and wishes to amend its 2020 Budget to include this additional amount as an item of revenue.

NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the Borough of Totowa that the Mayor and Council hereby requests the Director of the Division of Local Government Services to approve the insertion of an additional item of revenue in the 2020 Budget in the sum of \$203,300 which is now available as a revenue item from:

Miscellaneous Revenues	
Special Items of General Revenue Anticipated with Prior Written Consent of the Director of the Division of Local Government Services:	
Public and Private Revenues Offset with Appropriations:	
Passaic County CARES Act Fund	\$203,300

BE IT FURTHER RESOLVED, that a like sum of \$203,300 be and the same is hereby, appropriated under the caption:

General Appropriations
(A) Operations - Excluded from CAPS
Public and Private Programs Offset by Revenues
Passaic County CARES Act Fund \$203,300

BE IT FURTHER RESOLVED, that the Borough Clerk is hereby directed to forward two (2) copies of this Resolution to the Director of the Division of Local Government Services.

COMMITTEE ON PUBLIC SAFETY:

There was no report.

COMMITTEE ON PUBLIC WORKS:

Upon the recommendation of the Committee, there was a motion by Councilwoman Palazzo, seconded by Councilman Bucher to hire Joseph Dulski as a Department of Public Works Laborer. On roll call vote, all members of the Council present voted in the affirmative.

There was a motion by Councilman Bucher, seconded by Councilwoman Palazzo to adopt the following Resolution Authorizing The Purchase Of One Snow Blower For The Department Of Public Works. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 133-2020

RESOLUTION AUTHORIZING THE PURCHASE OF ONE SNOW BLOWER
FOR THE DEPARTMENT OF PUBLIC WORKS

WHEREAS, the Borough of Totowa Department of Public Works ("DPW") Superintendent has requested that a new snow blower be purchased for use by the DPW; and

WHEREAS, the Mayor and Council of the Borough of Totowa have determined that there is a need for a new snow blower; and

WHEREAS, the DPW Superintendent solicited proposals for the purchase of one new snow blower; and

WHEREAS, Riverdale Power Mower, 90 Hamburg Turnpike, Riverdale, New Jersey 07457 submitted a proposal for the purchase of one Toro Power Max HD Commercial 1428 OHXE Snow Blower in the amount of \$2,250.00, a copy of which is on file in the office of the Borough of Totowa Municipal Clerk; and

WHEREAS, the Mayor and Council of the Borough of Totowa desire to authorize the purchase of this Toro Power Max HD Commercial 1428 OHXE Snow Blower; and

WHEREAS, pursuant to the applicable New Jersey State laws, the purchase of this snow blower may be authorized without public bidding.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby authorize the purchase of one Toro Power Max HD Commercial 1428 OHXE Snow Blower from Riverdale Power Mower in the amount of \$2,250.00.

BE IT FURTHER RESOLVED, that the Mayor and Municipal Council of the Borough of Totowa do hereby authorize the Municipal Clerk and DPW Superintendent to execute any and all instruments relating thereto.

COMMITTEE ON ENGINEERING & PUBLIC PROPERTY:

There was a motion by Councilman Capo, seconded by Councilwoman Andriani to adopt the following Resolution Authorizing Professional Architectural Services For An Analysis And Feasibility Study Of The Municipal Building. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 134-2020

RESOLUTION AUTHORIZING PROFESSIONAL ARCHITECTURAL SERVICES FOR AN ANALYSIS AND FEASIBILITY STUDY OF THE MUNICIPAL BUILDING

WHEREAS, the Mayor and Council of the Borough of Totowa would like to explore the possibility of expanding the Police Department and various Municipal Department offices located within the Borough of Totowa Municipal Complex; and

WHEREAS, the Mayor and Council of the Borough of Totowa desire to retain the services of a professional architect to undertake an analysis and feasibility study of the Borough of Totowa Municipal Complex; and

WHEREAS, the proposed scope of work includes but is not limited to an analysis of the Police Station and all Municipal Department offices, interviews with Department Heads, evaluating interview data, researching code requirements and preparing cost estimates and a final report; and

WHEREAS, Tri-State Architects, P.C./Alaimo Group, 200 High Street, Mt. Holly, New Jersey 08060 has submitted a proposal dated November 19, 2020 for the analysis and feasibility study of the Borough of Totowa Municipal Complex at a cost not to exceed \$15,000.00, a copy of which is on file in the office of the Borough of Totowa Municipal Clerk; and

WHEREAS, the Mayor and Council of the Borough of Totowa on December 8, 2020 did examine the proposal submitted by Tri-State Architects, P.C./Alaimo Group; and

WHEREAS, pursuant to the applicable New Jersey State laws, these professional services may be awarded without public bidding.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby accept the proposal submitted by Tri-State Architects, P.C./Alaimo Group for professional architectural services for an analysis and feasibility study of the Borough of Totowa Municipal Complex in the amount of \$15,000.00.

BE IT FURTHER RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby authorize Tri-State Architects, P.C./Alaimo Group to perform the professional services as set forth in their proposal.

COMMITTEE ON LIAISON & INSPECTION:

There was a motion by Councilwoman Andriani, seconded by Councilman Bucher to approve Payment Estimate No. 1 in the amount of \$86,730.00 to Athletic Fields of America for the Synthetic Turf Fields at the PAL. On roll call vote, all members of the Council present voted in the affirmative.

There was a motion by Councilwoman Andriani, seconded by Councilman Bucher to adopt the following Resolution Authorizing A Contract To Severe Structures, LLC For The Borough Of Totowa Home Improvement Program. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 135-2020

RESOLUTION AUTHORIZING A CONTRACT TO SEVERE STRUCTURES, LLC FOR
THE BOROUGH OF TOTOWA HOME IMPROVEMENT PROGRAM

WHEREAS, the Borough of Totowa Home Improvement Program (“HIP”) was created by the Borough of Totowa to provide funds to assist properties occupied by low and moderate income households to correct existing interior and exterior health, safety and code substandard conditions of major housing systems in conformity with the standards of the New Jersey State Housing Code, N.J.A.C. 5:28 and the Rehabilitation Subcode, N.J.A.C. 5:23-6; and

WHEREAS, the HIP is guided by N.J.A.C.5:93-5.2 and in accordance with the New Jersey Department of Community Affairs (“DCA”) Council on Affordable Housing (“COAH”) regulations; and

WHEREAS, the Borough of Totowa has contracted with Community Grants, Planning and Housing LLC (“CGP&H”), a private consulting company specializing in the implementation of publicly-funded housing rehabilitation programs, to administer the HIP; and

WHEREAS, by Resolution No. 77-2020 dated June 9, 2020, the Mayor and Council of the Borough of Totowa entered into a Home Improvement Agreement with Monwar Shahid and Shema Khanom for the property located at 21 Mair Avenue, Totowa, New Jersey 07512, also identified as Block 127, Lot 9 on the official tax map of the Borough of Totowa; and

WHEREAS, CGP&H advertised a Request for Rehabilitation Bid (Case No. TOTO-1902) on July 21, 2020 inviting general contractors to bid on the repair and rehabilitation work for the property located at 21 Mair Avenue (the “Scope of Work”); and

WHEREAS, the homeowners and CGP&H have reviewed the bids and CGP&H has recommended the award of a contract to the lowest apparent bidder Severe Structures, LLC, 38 Delaware Avenue, 2B, Passaic, New Jersey 07055 in an amount not to exceed \$19,600.00 for the Scope of Work; and

WHEREAS, the HIP is funded by the Borough of Totowa’s Affordable Housing Trust Fund and there is sufficient funding available for the award of this contract.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby authorize the award of a contract to Severe Structures, LLC for the Borough of Totowa Home Improvement Program for repairs to the property located at 21 Mair Avenue, Totowa, New Jersey 07512 in an amount not to exceed \$19,600.00.

COMMITTEE ON LEGISLATION & ORDINANCES:

There was a motion by Councilwoman Palazzo, seconded by Councilman Picarelli to introduce on first reading and advertise for public hearing the following entitled ordinance. On roll call vote, all members of the Council present voted in the affirmative.

ORDINANCE NO. 11-2020

**AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF TOTOWA
CHAPTER 407 ENTITLED "WATER", ARTICLE I, "WATER USE",
SECTION 25, "CHARGES AND FEES"**

There was a motion by Councilwoman Palazzo, seconded by Councilman Picarelli to adopt the following Resolution Demanding That The New Jersey State Legislature Accept Its Responsibility To Administer The Provisions Of The Affordable Housing Act And Stay Further Action Until Such Times As It Has Promulgated Rules Governing Its Implementation. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 136-2020

RESOLUTION DEMANDING THAT THE NEW JERSEY STATE LEGISLATURE
ACCEPT ITS RESPONSIBILITY TO ADMINISTER THE PROVISIONS OF THE
AFFORDABLE HOUSING ACT AND STAY FURTHER ACTION UNTIL SUCH TIME
AS IT HAS PROMULGATED RULES GOVERNING ITS IMPLEMENTATION

WHEREAS, in 1975 the New Jersey Supreme Court in Mount Laurel I decreed that every municipality in New Jersey, "must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need therefor" (10 S. Burlington City. N.A.A.C.P. v. Mount Laurel Twp., 67 N. J. 151, 174 (1975)); and

WHEREAS, in 1983, the Supreme Court in Mount Laurel II expanded the Mount Laurel doctrine, saying:

“Therefore proof of a municipality’s bona fide attempt to provide a realistic opportunity to construct its fair share of lower income housing shall no longer suffice. Satisfaction of the Mount Laurel obligation shall be determined solely on an objective basis: if the municipality has in fact provided a realistic opportunity for the construction of its fair share of low and moderate income housing, it has met the Mount Laurel obligation to satisfy the constitutional requirement; if it has not, then it has failed to satisfy it. Further, whether the opportunity is “realistic” will depend on whether there is in fact a likelihood-to the extent economic conditions allow-that the lower income housing will actually be constructed. Plaintiff’s case will ordinarily include proof of the municipality’s fair share of the regional need and defendant’s proof of its satisfaction. Good or bad faith, at least on this issue, will be irrelevant.” (S. Burlington Cty. N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158, 220-22 (1983)); and

WHEREAS, the Supreme Court in Mount Laurel II suggested that builders’ remedies should be used to force compliance by municipalities, reasoning that:

Experience... has demonstrated to us that builder’s remedies must be made more readily available to achieve compliance with Mount Laurel. We hold that where a developer succeeds in Mount Laurel Litigation and proposes a project providing a substantial amount of lower income housing, a builder’s remedy should be granted unless the municipality establishes that because of environmental or other substantial planning concerns the plaintiff’s proposed project is clearly contra to sound land use planning. We emphasize that the builder’s remedy should not be denied solely because the municipality prefers some other location for lower income housing, even if it is in fact a better site. (S. Burlington Cty. N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158, 279-80 (1983)); and

WHEREAS, the New Jersey Legislature responded quickly to the Court’s Mount Laurel decision by enacting the Fair Housing Act of 1985 N.J.S.A. 52:27D-301, et seq., which created the Council on Affordable Housing (“COAH”) which as the Court noted in Mount Laurel IV “... was designed to provide an optional administrative alternative to litigating constitutional compliance through civil exclusionary zoning actions,” (In re Adoption of N.J.A.C. 5:96 ex rel. New Jersey Council on Affordable Hous., 221 N.J. 1, 4 (2015)); and

WHEREAS, COAH, pursuant to the authority granted to it by the Fair Housing Act., then adopted procedural and substantive rules which provided clear guidance to municipalities as to how they could meet their affordable housing obligation; and

WHEREAS, in its rules COAH assigned a fair share number to each municipality and set forth various mechanisms that a municipality could use in order to satisfy that obligation; and

WHEREAS, the Borough of Totowa, like many other municipalities throughout the State of New Jersey, met its First and Second Round Affordable Housing Obligations through the COAH process; and

WHEREAS, COAH adopted the First Round Rules for the period from 1987 through 1993 and the Second Rounds Rules for the period of 1993 to 1999 and then extended to 2004; and

WHEREAS, COAH was obligated by the Fair Housing Act to adopt Third Round Rules to take effect in 2004; however, but never adopted rules that were acceptable to the Courts;

WHEREAS, in 2015, the Supreme Court designated Mount Laurel judges in each of the fifteen court vicinages to hear all Mount Laurel cases; and

WHEREAS, instead of providing clear guidance, like the COAH rules did, the Supreme Court in Mount Laurel IV set forth vague standards that have led to a complex system of non-uniform implementation; and

WHEREAS, as a result of the Supreme Court's decision in Mount Laurel IV, municipalities no longer were assigned fair share numbers, no longer had clear and concise procedural and substantive rules to follow, and no longer had one tribunal to decide these issues, which meant that event the threshold issues of regional need and local fair share obligations had to be litigated before fifteen different Mount Laurel judges, and as a result municipalities were forced to spend tens of thousands, and in some cases hundreds of thousands of dollars, to negotiate fair share numbers with the Fair Share Housing Center ("FSHC") and to gain court approval of settlement agreements negotiated with FSHC; and

WHEREAS, the Supreme Court in Mount Laurel IV concluded its opinion by encouraging the Legislature to once again assume responsibility in the area of affordable housing, saying:

“In conclusion, we note again that the action taken herein does not prevent either COAH or Legislature from taking steps to restore a viable administrative remedy that towns can sue in satisfaction of their constitutional obligation. In enacting the FHA, the Legislature clearly signaled, and we recognized, that an administrative remedy that culminates in voluntary municipal compliance with constitutional affordable housing obligations is preferred to litigation that results in compelled rezoning. (Citation omitted.) It is our hope that an administrative remedy will again become an option for those proactive municipalities that wish to use such means to obtain a determination of their housing obligations and the manner in which those obligations can be satisfied” (In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Hous., 221 N.J. 1, 34 (2015)); and

WHEREAS, it has been five years since the Mount Laurel IV opinion was issued and, to the detriment of each municipality in New Jersey and to the future viability of the State, neither the Legislature nor the Governor nor COAH have taken any action to remedy the situation; and

WHEREAS, if the Governor, the Legislature and COAH continue to ignore their responsibilities, municipalities will once again face a burdensome, time-consuming and expensive process to obtain Fourth Round Mount Laurel compliance starting in 2025;

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Totowa, County of Passaic, State of New Jersey, do hereby demand that the Governor and the Legislature cease their unconscionable disregard of this most important provision of the State constitution and take immediate and decisive action to restore a viable administrative remedy that municipalities can use in satisfaction of their constitutional obligations to provide affordable housing.

There being no further business to come before the Council, there was a motion by Councilman D’Angelo, seconded by Councilwoman Andriani that the meeting be adjourned. On roll call vote, all members of the Council present voted in the affirmative.

Joseph Wassel, RMC
Municipal Clerk