

**MINUTES OF THE
MENDHAM BOROUGH PLANNING BOARD
December 14, 2009
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER

The regular meeting of the Mendham Borough Planning Board was called to order by Chair Kraft at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

CHAIR'S OPENING STATEMENT

Notice of this meeting was published in the Observer Tribune on January 15, 2009 and the Daily Record on January 16, 2009 and was posted on the bulletin board in the Phoenix House in accordance with the Open Public Meetings Act, and furnished to all those who have requested individual notice and have paid the required fee.

ATTENDANCE:

Mayor Henry – Absent
Mr. Bradley – Present
Councilman Carr – Present
Mr. Cascais – Present
Mr. Gertler – Absent

Mr. Kraft - Present
Mrs. Kopcsik - Present
Mrs. Lichtenberger - Present
Ms. Sandman - Present

Alternates:

Ms. Gemberling, Alternate I - Present
Mr. Cavanaugh, Alternate II–Absent

Also Present:

Mr. Banish, Special Highlands Consultant

APPROVAL OF MINUTES:

Mr. Cascais made a motion to approve the minutes of the November 9, 2009 meeting as written. Mr. Bradley seconded. All members being in favor, the minutes were approved as written.

PUBLIC COMMENT

Chair Kraft opened the meeting to any public comment or questions on matters that were not on the agenda. There being none, the public comment session was closed.

TRC UPDATES

Mrs. Kopcsik provided an update on the TRC applications.

OTHER BUSINESS

Ms. Gemberling questioned whether or not the Planning Board should be concerned about any regulations associated with solar panels. After a short discussion, Chair requested that the Board Secretary contact Mr. Humbert and ask him to provide his opinion and what other towns may be doing.

Responding to the Chair on the status of the sign letter, Ms. Sandman reported that the Mayor, Councilman Carr and she would be attending the Business Association meeting to start the dialog on the signage. Geoff Price has completed a report and there is some moderate compliance. Chair noted that nothing has seemed to change to a great degree.

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There was a delay in the proceedings as the Board waited for Mr. Banish to resolve technical difficulties with the presentation.

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DISCUSSION

Highlands Modules V & VI: Mr. David Banish, Special Highlands Consultant for the Borough explained to the Board that the plan conformance modules pertaining to Build-out (I&II), Environmental Resource Inventory (IV), Regional Master Plan Element (V) and Ordinances (VI) have been completed in draft. In terms of the Housing Element and Fair Share Plan (III), the Borough has previously submitted to COAH. The grant money provided by the Highlands is intended for the Borough to evaluate the program and with the completion of the documentation, further analysis can begin. As a Planning Area town, conformance is voluntary.

In terms of the relationship to the Municipal Land Use Law, Mr. Banish advised that in accordance with Section 62, the Master Plan and the Zoning Ordinances should be consistent. The Highlands has provided a model of the Regional Master Plan and the associated ordinances that are consistent. They have identified two levels of plan conformance: Basic and Full. Basic is the minimum requirements to meet the statutory timeframes and includes the six modules to obtain the Master Plan and Zoning Ordinance consistency. Full plan conformance would take place over an extended period of time.

Mr. Banish noted that the Borough Master Plan has very environmentally conscious goals and objectives for environmental resource protection. That is consistent with the Highlands Plan while some of the details may differ. He continued that Mendham Borough's steep slope requirements are stricter than the Highlands. In terms of stormwater management, the Borough goes beyond the RSIS requirements of the State and includes restrictions for minor development requiring seepage pits for any increase in runoff of 2500 sq. ft. or more. This is well below the one acre requirement of the State.

Referring to Mendham Borough's Master Plan, Mr. Banish read a statement outlining the Borough's desire to maintain its rural and historic character. He indicated that the statement was directly related to anti-sprawl. While some ordinances from the Conservation Plan have been implemented, the Borough Council has not yet implemented ordinances for all the goals and objectives. The Regional Master Plan provides the detailed ordinances.

Continuing, he described the Highlands Regional Master Plan as a capacity based sub-watershed plan. Watershed are identified by HUC around the country and the longer the number the smaller the watershed. For Mendham Borough the Highlands has identified conservative build-out of 61 units in the non-sewered area and 1 residential unit in the Sewered Service Area. Utilizing a map he identified the HUC 14s identified in Mendham Borough and how many units of build-out would be associated with each HUC and overlay zone, i.e. Existing Community, Conservation and Protection.

He outlined the areas of exclusions for Highlands approval as pertain to the Planning Area. The triggers are always associated with impervious coverage or disturbance. Any single family dwelling is exempt from Highlands review and the natural resource standards in the ordinance if it is within the parameters. Once the ordinance is adopted and the threshold exceeds the limit, it is subject to the restrictions.

Mr. Banish advised that questions are best answered by the Highlands Council after the petition is submitted. Filing the petition does not commit the Borough. The Master Plan and ordinances would need to be adopted. Chair Kraft noted that since the Borough has already filed with COAH, we do not have any timing requirements. We need to decide what option we will choose moving forward. Mr. Banish noted that the County Wastewater Management Plan will influence the decision. DEP will provide the development densities and they will permit more development. Under a Highlands Plan conformance scenario it is his belief that the Highlands build-out numbers are the limit, not DEP estimates. In terms of using just the DEP nitrate dilution standards, he believes that COAH might be able to require inclusionary zoning.

He continued with exclusions stating that if a change of use does not affect the footprint of the building, it is permitted. It should not affect modest changes in the central business district. Minor signage changes are also exempt. It also appears that they are allowing for the addition of HVAC improvements with a 50 ft. cap. ADA is also permissible. In terms of exemptions in the preservation area, there are provisions for reconstruction of structures within 125% of the existing building for improvements to a single family dwelling owned before August 10, 2004. Schools and houses of worship are not affected unless there is construction on another part of the site. Agricultural activities are permitted.

There are a series of policy issues that must be decided such as mixed use development and center based planning. The question is whether the Borough is ready to organize development in

a different way than it has over time. The southerly portion of town which today has larger lot zoning has a portion that is existing community as a result of the land lot clearance characteristics. The Regional Master Plan is designed to move towns away from large lot sprawl development. The Board would be called upon to determine where the cluster development would fit in town. Responding to the Chair on the relationship to the 1 permitted unit in the SSA and the 61 septic systems available under the build-out, Mr. Banish stated that communal ground water discharge systems not connected to the sewer system could be used.

Outlining the prohibited land uses, he indicated that the Borough does not permit any of them. There will be an interactive process during Plan Conformance where the review of the uses takes place with the Highlands to see if they are compatible. There are also prohibited uses in the Carbonate Rock, Prime Water Recharge and Well Head Protection areas. Underground storage tanks, hazardous waste and cemeteries are a concern. As a planning area town the Borough can take its time to get the appropriate answers.

Mr. Banish advised the Board that clustering for new development is mandatory under a plan conformance scenario. The idea is to locate new development adjacent to existing development whether it be in the Forest Resource Area or the Conservation Zone. Under a clustering arrangement for the Regional Master Plan, the open space set aside is 80% in the septic area and 90% in a sewered service area. All land in the Agricultural Resource Area would be subject to the mandatory clustering requirements.

Explaining the assumptions behind the build-out units for the clustering, Mr. Banish stated that the Highlands looked at water flow (discharge) and water consumption (supply). On the supply side they looked at how much water was being removed from the HUCs. In terms of waste water flow they looked at capacity and nitrate dilution. Yield is based on one septic system serving one single family home and 300 gallons of wastewater per day is assumed. Density is calculated on the overall lot size. Tracts can be contiguous or noncontiguous. Noncontiguous clustering allows for lots on the opposite sides of the HUC to be added together to determine the units based on yield. Building can occur on the most appropriate lot and the other lot is deed restricted. This potentially becomes a vehicle for conservation. Over time, the private development community will become the driver as they look for noncontiguous development opportunities. This can be written into ordinances.

In terms of non-residential development, there is a concept called "equivalent yield". It is based on a single family dwelling, four persons per household, 300 gallons per day wastewater. There are equivalents for deed-restricted senior citizen residential units, office and commercial uses, and industrial uses. Some septic systems could be removed from residential to accommodate commercial growth. Responding to the Chair on the impact of schools, Mr. Banish indicated that if a school is growing to accommodate local population growth, he thought they may be exempt. He would explore the issue further.

There are two methods for identifying how much residential growth can be supported on a lot. One is through an involved analysis utilizing capacities and the natural resource base. The Highlands does not want to advise on the impact until after plan conformance. As a planning area, the Borough may be able to get the answers ahead of time. One can expand water and/or sewer capacity, but Highlands approval would be required.

Ms. Callahan questioned on how much control the Borough would maintain over zoning. She referenced the southern part of town by the golf course that was identified as existing community zone and questioned whether through the "equivalent yield" process one could require it go "commercial". Mr. Banish advised that the Borough would continue to have control over the prohibited and permitted uses in the zoning ordinance. The Borough would be required to zone not to exceed the densities in the Regional Master Plan, but he did not think that anyone could dictate the zoning. The Borough has spent much time managing character and open countryside. Some landowner rights would be removed given required zoning. The Regional Master Plan appears to be the most conservative approach guaranteed by the Attorney General to protect your zoning. If the affordable housing obligation is met, the town could be maintained with modest growth.

Addressing Ms. Lewandowski, ad hoc committee member, on how many units he thought the 61 septic systems would allow for clustering, Mr. Banish advised that he would advise at the next meeting. Board wanted to understand if one large piece of property could utilize all of the 61 septic systems available and hence there would be no further growth permitted. Mr. Banish explained that there could be an intra-Borough TDR system set up, and the development community would need to purchase property so that the density could be used on the one large tract.

Continuing, Mr. Banish explained that utilities could be extended due to TDR receiving zones, infill development or redevelopment, or to address public health and safety. If there is an extension to the sewered service area the density cannot exceed 2 dwelling units per acre that equates to a 20,000 sq. ft. lot. Multifamily would be 6 dwelling units per acre. In a clustering scenario, the unit density would not be able to exceed 10 mg./ltr. That equates to 1 to 2 acres. In clustering only 20% would be built at 10 mg./ltr. Washington Township has used lot size averaging to keep the open space with a farmhouse owner as opposed to having the open space owned by an association. Mandatory clustering thresholds for septic systems are 120 acres for the Protection Zone, 40 acres for the Conservation Zone and 35 acres for the Existing Community Zone. For Cluster development served by wastewater utilities the threshold is 30 acres in all zones.

Concluding, Mr. Banish explained that the forest resource area has the greatest restrictions. A forest inventory is required as well as a mitigation plan. Riparian corridors and wetlands must be identified. The existing Borough Master Plan calls for some development to occur in forested areas. Referencing a chart with Highlands numbers, he indicated that the average acreage in the Protection Zone would be around 25 acres and the Conservation Zone ranges from about 9 to 132 acres. The large numbers are related to the areas where there is existing community zone and build-out. There is no available development.

Mr. Banish recommended that to continue moving forward in its understanding there is more detail to be presented. Each area of natural resource protection should be reviewed. Chair expressed that in each area we should look at clustering and its impact. There may be zoning changes we want to implement even if we do not opt into Highlands.

ADJOURNMENT

There being no additional business to come before the Board, on motion made, seconded and carried, Chair Kraft adjourned the meeting at 9:15 p.m. The next regular meeting of the Mendham Borough Planning Board will be held on Monday, January 11, 2010 at 7:30 p.m. at the Garabrant Center, 4 Wilson St. That will be the regular and reorganization meeting of the Board.

Respectfully submitted,

Diana Callahan
Recording Secretary

