

**MINUTES OF THE  
MENDHAM BOROUGH PLANNING BOARD  
November 9, 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 – Present (8:00 p.m.)  
Mr. Bradley – Present  
Councilman Carr – Absent  
Mr. Cascais – Present  
Mr. Gertler – Present

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

Alternates:

Ms. Gemberling, Alternate I - Present  
Mr. Cavanaugh, Alternate II–Present (7:40 p.m.)

Also Present:

Mr. Henry, Attorney  
Mr. Ferriero, Engineer  
Mr. Humbert, Planner

**APPROVAL OF MINUTES:**

Ms. Gemberling made a motion to approve the minutes of the September 14, 2009 meeting with one change to clarify that the minutes of the August 10, 2009 meeting had been approved. 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.

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**LAND USE ORDINANCE REFFERAL REVIEW**

**Ordinance 14-09: An Ordinance of the Borough of Mendham, County of Morris, and State of New Jersey to Amend and Supplement Chapter 215, Zoning, Article XV, Historic District Overlay Zone, Section 215-48, Establishment of Overlay Zone, of the Code of the Borough of Mendham**

Mr. Henry, Esq. recommended that the phrase “additional” be added to the last sentence in Section 1 to clarify that the properties are incremental to those already in the existing Historic District.

Ms. Sandman made a motion to advise the Borough Council that the ordinance is consistent with the Borough Master Plan and to recommend the language change. Mrs. Kopcsik seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Bradley, Gertler, Kopcsik, Sandman, Gemberling, Cavanaugh, Kraft  
 Opposed: None  
 Abstentions: None

The motion carried. Ms. Callahan will prepare and send a letter to the Borough Council.

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**Ordinance 15-09: An Ordinance to Amend and supplement Chapter 102, Fees, and Chapter 124, Land Use Procedures, Section 124-26E of the code of the Borough of Mendham, County of Morris, State of New Jersey to Amend Development Fees**

Mr. Henry, Esq. explained that the ordinance puts development fees in place. Responding to Ms. Gemberling's question on the previous suspension of the fees, Mr. Henry, Esq. advised that the State had indicated at one time that they would collect the fee, but it did not become the applicable law. In case the Borough can collect fees, the Borough would like to have the ordinance in place.

Mr. Humbert clarified that the plan before COAH includes non-developmental options by which the Borough can meet its obligation. The fees would be a way that the Borough could implement the obligation by such things as an accessory apartment or the purchase of a two family home for conversion. COAH identifies about 12-14 mechanisms for non-developmental options. He believes the Mayor and Council would want the ordinance in place.

Addressing Ms. Gemberling on whether there is any risk if the Borough collects fees and the State does not permit it, Mr. Henry, Esq. advised that the State might request that the unused funds be returned to Trenton. Mr. Humbert added that if the ordinance is not implemented, then the State would take the fees initially and they could not be used locally. Chair Kraft added that the Borough has spent some of the monies collected in the past for MASH renovations.

Ms. Gemberling made a motion to refer to Council as approved. Mrs. Kopcsik seconded.

ROLL CALL: The result of the roll call was 8 to 0 as follows:

In Favor: Bradley, Cascais, Gertler, Kopcsik, Sandman, Gemberling, Cavanaugh, Kraft  
 Opposed: None  
 Abstentions: None

The motion carried. Ms. Callahan will prepare and send a response to the Council.

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**DISCUSSION**

**Village Center Designation:** At the request of the Chair, Ms. Callahan explained that the discussion on the expired Village Center Designation had been raised in a meeting of the Mayor's Ad Hoc Committee that is reviewing the options of Highlands and State Plan. If we chose either of those options, we would need to determine if we still wanted to be a formally designated Village Center.

Mr. Humbert explained to the Board that in 1995 the Borough of Mendham was one of the first municipalities to be designated a Village Center in accordance with the State Plan. It was a Village Center within Planning Area 5. In 2008 the formal designation expired. At the time of designation numerous benefits were expected including expedited permitting and preference for grants. To his knowledge the Borough has never received any benefits. It was also designed to help create character to the Borough. Mr. Henry, Esq. added that it was also to protect the remainder of the Borough from growth.

Continuing, Mr. Humbert advised the Board that the Borough would need to make a decision as to whether they want to be a formally designated village center or self-identify as a village Center. State Plan Endorsement is the only way to obtain the formal designation. The second major choice is to opt into the Highlands and become a village center as State Plan Endorsement is received when opting in. Our Master Plan calls us a village center and we could stay self-identified in the Master Plan.

Chair Kraft expressed his concern that with potential reinstatement there could be the potential for infill or vertical growth given the State environment. He expressed that what was positive could become negative. Also, under the Highlands they will protect the outer areas and they have already said we cannot build.

Mr. Humbert explained that since 1992, the State Plan has focused on growth in the centers. Mr. Henry, Esq. added that there is a difference conceptually of what was envisioned 15 to 20 years ago versus now. Then, if there was to be growth, it would be directed to the outer areas. Now the thinking is more of "since there is a 'there', let's find growth to put there". The question is do you define the area for growth or place the growth there should it happen. Someone else may direct the growth to the Village Center. Mr. Kraft summarized that the paradigm has changed.

Clarifying his statement that the Borough has no growth, Mr. Humbert stated that, assuming the economy recovers, there could be some growth. In terms of the growth from 2004 to 2008, 10 units have been constructed outside the center. Growth in the center is impacted by the lack of sewer capacity. If the DEP ignored their own regulations, that could change.

Mr. Ferriero cautioned the Board that under the Highlands, the center of the Borough is an Existing Community Zone. It is the area where Highlands has designated higher densities in terms of units per acre and FAR. Mr. Henry, Esq. added that the Existing Community Zones are also receiving places for other people's needs that cannot be served when the Highlands prohibits it.

Chair stated that we do not have a complete definition of what the Highlands means positively or negatively. Mr. Ferriero continued that there are 88 municipalities in the Highlands and over 500 that are not. That larger number needs to deal with the Office of Smart Growth. There is no way that the current Smart Growth Plan Endorsement Process is sustainable in its current form. It will need to be changed. Mr. Humbert reported that as of June based research he had completed, only two municipalities filed for Plan Endorsement in 2009. Over 30 petitions have been filed since 2005 when Plan Endorsement process began. Of this, only one has received Plan Endorsement.

Board discussed that the State Endorsement process would need revision, and that they should not make a decision until the process is better understood. As the Borough has filed with COAH there is no consequence not to go forward with Highlands. There is always the option to go forward with Highlands at a later date.

Responding to Ms. Callahan on what would happen if COAH did not accept the durational adjustment as filed, Mr. Henry, Esq. advised that then we could go with Highlands or go back to COAH with additional input. After she pointed out that Mendham Borough is identified as a Village Center in the Highlands Regional Master Plan, Mr. Ferriero stated that in the context of the Highlands the center has expired. Mr. Humbert advised that the Highlands has adopted the State Plan language and no matter what option, it is command and control top down.

Chair questioned whether the decision should be based on the negatives of the control top down. It does not appear there are many benefits. Mr. Ferriero recommended the Board read the draft Highlands Land Use Ordinance and they would know the downside.

Addressing Ms. Gemberling's question on the ramifications of the December 8, 2009 date, Mr. Henry, Esq. advised that there are none to Mendham Borough. Mr. Humbert explained that the date pertains to a Preservation Area Municipality or a Planning Area that opted in. Mr. Ferriero added that the December 8 date pertains to towns that have not filed a COAH plan. If a town was going to opt in to Highlands, they would have until June. Both dates are meaningless to Mendham Borough as they have filed a COAH plan. Responding to the Chair on whether anything has changed with COAH in the last several months, Mr. Henry, Esq. advised that it has not. Mayor Henry questioned whether there would be any change given a new Governor.

Chair recommended that the Highlands process be continued, but we hold on a decision. Nothing seems to have changed in terms of new information. Mr. Humbert cautioned that much of the work is a top down computer exercise. In terms of Highlands Module III, the land capacity exercises showed that the Borough has the capacity for 1 dwelling unit in the SSA and 61 dwelling units outside the SSA. There are 10 units of growth reported to the DCA. Dividing 72 by 5 provides approximately 14 COAH units from growth January 1 2004 to 2018. We would need to take care of 10 units immediately. Assuming the 14 COAH units if one opted into the Highlands and removing 7 units for DeNeufville and the 1 Tiger Realty Unit, 6 new Highlands generated units remain. Our current plan of 10 that has been submitted to COAH addresses how the units would be accomplished. His opinion is that if COAH requests that we modify our submitted plan, our plan is flexible enough to accomplish that.

Responding to Ms. Callahan on what the process and timing would be if the Borough did decide to go forward with Highlands Module III, Mr. Humbert explained that the Planning Board would need to amend the Housing Element and Fair Share Plan of the Master Plan subsequent to a public hearing. It would also need to be circulated to the Highlands Commission by the municipality. Assuming the Highlands Commission concurs, it would then go to COAH. COAH considers the Highlands growth number a forever number, but their numbers are a third round number. They will evaluate the reasonability of the Highlands numbers based on actual growth and they should be parallel.

Responding to Mr. Gertler on what would happen if we did not meet our obligation, Mr. Humbert advised that there could be a law suit or a builder's remedy. Mr. Henry, Esq. advised that a builder's remedy could be significant. Mr. Ferriero added that there is a consideration of limitation based on the sewer and septic capacity, but the ramifications have been untested and are not known.

Responding to Ms. Sandman on how the Board would like to proceed and addressing Ms. Callahan's concern on timing should we want to use the Highlands numbers, Mr. Ferriero advised that there is no timeline for the Borough. If a town wants to take advantage of the COAH extension until June of 2010 with the Highlands, then Module VII would need to be filed by December and COAH submitted by March to the Highlands. Mr. Henry, Esq. reinforced that it does not affect the Borough as we have filed with COAH. Addressing the Chair's concern on timing should the Borough plan not be accepted by COAH, Mr. Ferriero stated that the Borough will re-file with COAH.

In terms of the next steps with COAH, Mr. Humbert explained that there should be a letter sent to the Mayor with a Planner's Report attached. The letter will outline potential conditions and what should be changed.

Ms Sandman summarized that in terms of Highlands work, Modules I, II and IV are completed. Modules V & VI are under development. Mr. Humbert explained that most of the data for Module III already exists. Messrs. Ferriero and Henry encouraged moving forward with understanding Modules V & VI.

Responding to the Chair on the Board's opinion related to the Village Center, Mr. Gertler requested clarification on self-identification. Ms. Gemberling explained that we are self-identified in the Master Plan and we can just continue with that. In terms of the State Plan, Mayor Henry commented that given the state of the Office of Smart Growth nothing may be accomplished now.

Board discussed that the original intent of the Village Center was to protect the environs. It appears that the mindset in Trenton has changed and the upside might not be as great for us in the future. The center might become part of the growth instead of the area where there might be growth. If we stay a center we might be obligated to grow and we cannot anyway as we do not have sewer capacity. If the DEP would allow septic, we might end up with infill.

After discussion it was determined to maintain the idea of the village center, but at the present time not pursue the designation. We need to see what happens with the Office of Smart Growth.

Chair summarized the Planning Board plan as discussed. 1. Village Center Hold. 2. Wait to see what COAH reports. 3. Do what is necessary to continue the Highlands Process to be in a position to make a decision. Overall, we do not want to let any option expire. He requested that the professionals bring any changes to the Board's attention in a timely fashion.

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**Signage:** Mayor Henry provided feedback on the letter that he had sent out requesting the business owners to review their signage. The response has been fairly positive with some owners actually taking down signs and working with us. Some are just not working with us.

Ms. Sandman reported that Geoff Price, Zoning Officer, is monitoring the changes in the signage and in the middle of November he will review the results and report back.

Chair advised that if there is enforcement, it becomes the responsibility of the Council.

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**Wastewater Management Plan Update:** Mr. Ferriero reported that there is a Statewide Nitrate Dilution Model for non-sewered areas. In the Highlands there is a Highlands model. The DEP had to determine what to do with towns like Mendham Borough that may be located in the Highlands, have to have a Wastewater Management Plan consistent with the Highlands, but may chose not to opt in. DEP has developed a hybrid model. The numbers for Mendham Borough under the hybrid model are almost the same as the numbers from the State-wide model.

The County has completed a municipal build-out based on the Wastewater Management Plan and existing zoning. Highlands has determined 55 additional lots for septic in Mendham Borough. Using the nitrate dilution model, it is 3 to 4 times that. Under the Nitrate Dilution model at the County level, if land is open space or farmland preservation, that is still land that can dilute nitrates. The nitrate dilution potential creates a lot potential on which one cannot build. In Highlands if the land is in open space it is not included. The County has advised him that they do not believe that the State will require zoning to increase to meet the numbers. The lots will not get smaller or bigger.

Responding to the Board on how the sewerred area would be affected, Mr. Ferriero advised that the lots that are served are included. If you have an oversized lot that is served, if it is subdivided, it is still served. The new lot does not lose the sewerred service designation. If the oversized lot is not served at all, the answer is not known.

Chair questioned that given the fact that Mendham has a certain number of connections would connections for subdivided lots be recognized. Mr. Ferriero stated that it is necessary to separate capacity issues and service area issues. The service area is a like a zone and subdividing a lot in that area does not remove it from the area. The capacity of the plant is a DEP issue and the management of the capacity is a municipal issue. The County Wastewater Management Plan is only a zone plan for sewer and septic service.

Responding to Mr. Gertler on whether a septic could be put in a subdivided lot in a sewerred area, Mr. Ferriero stated that he did not know at this time. There are ordinances that will need to be developed and the details will be then be known. Mr. Humbert advised that one of his municipalities has adopted a Wastewater Management Plan and a riparian buffer ordinance had to be adopted. It is creating an administrative and legal nightmare.

## **OTHER BUSINESS**

Ms. Gemberling raised the issue of how the Borough monitors and enforces the conditions of resolutions on an on-going basis. She questioned buffering being removed on Talmage Road that the Board had requested to maintain the streetscape. The homeowner had approached the Borough and was advised that there were no rules governing it.

Mr. Henry, Esq. advised that the Planning Board restrictions are incorporated into a resolution that one would hope would be obtained in the title search process. The only way to monitor is if a permit is required from the Borough.

Ms. Gemberling continued that years ago conservation easements were not recorded. Since then that has changed. She questioned whether the Planning Board should have the foresight to develop mechanisms to monitor the conditions. In the past the Planning Board has spent many weeks discussing compromises for community issues, i.e. trails, streetscaping. In the case she has raised, the streetscape was not preserved. Why have all the discussion if it is not implemented.

Chair referenced previous discussions on a tree ordinance and permitting that was decided against. Mr. Henry, Esq. suggested that during the approval process we may need to think if formal documentation for various conditions is required. He also cautioned that perpetuity of a given decision by a given board may not be advisable in all cases. A Board may want to revisit a decision given changes. Chair referenced the Board's discussion on the village center.

Ms. Sandman referenced the resolution and what it contained. Chair raised the opposite side of the issue and challenged that sometimes the Board may not be focused on the major issues. They need to take a slow approach to what restrictions we place on a homeowner. What the Board requests of a developer may not be appropriate for a homeowner. Mrs. Kopschik clarified that in the original case for Talmage Road, the homeowner came to the Borough and the resolution was not reviewed. Ms. Gemberling added that a bad result now exists. We are left with a substandard sidewalk that was only approved to preserve the streetscape.

Mr. Ferriero advised that the Board needs to be realistic about what the plans shows. He tries to point them out. For example, we looked at saving trees in the case of Tiger Realty, but when the area was cleared, the upper part of the trees were in very bad shape. Mr. Bradley added that

perhaps we need to “memorialize” the end result or how the property looked when the development was finished.

Ms. Gemberling summarized that after a Board spends significant time working with an applicant for a result, there should be a way to assure that the result occurs. Chair added that in order to accomplish that the Board needs to be realistic in what it requires. Introducing tree ordinances may be distasteful to the public. Mr. Humbert advised that there are new ways of thinking that should be considered. For example, drip lines for construction have been used in the past. Newer research has shown that going beyond the drip lines does affect the roots and trees can die.

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#### **TRC UPDATES**

Mrs. Kopcsik provided an update on the TRC applications

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#### **ADJOURNMENT**

There being no additional business to come before the Board, on motion made, seconded and carried, Chair Kraft adjourned the meeting at 9:45 p.m. The next regular meeting of the Mendham Borough Planning Board will be held on Monday, December 14, 2009 at 7:30 p.m. at the Garabrant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan  
Recording Secretary







