

**MINUTES OF THE  
MENDHAM BOROUGH PLANNING BOARD  
May 14, 2012  
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 8:05 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 and the Daily Record on January 12, 2012 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:**

Mr. Bradley – Present	Mrs. Lichtenberger - Absent
Mr. Cascais – Present	Ms. Sandman, Administrator – Present (8:10-9:00 p.m.)
Mr. Gertler – Present	Councilman Sharkey - Present
Mayor Henry – Present	
Mrs. Kopcsik - Present	
Mr. Kraft - Present	

Alternates:	Mr. Cavanaugh, Alternate I – Present
	Ms. Isaacson, Alternate II - Absent

Also Present:	Mr. Henry, Attorney
	Mr. Ferriero, Engineer
	Mr. McGroarty, Planner
	Ms. Callahan, Secretary

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**MINUTES**

On motion made by Mayor Henry, seconded by Councilman Sharkey and carried, the minutes of the regular meeting of April 9, 2012 were approved as written.

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**PUBLIC COMMENT**

Chair opened the meeting to questions and comments on items not included in the agenda. There being none, the public comment session was closed.

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**ORGANIZATION ITEM:** Appointment of Board Engineer (May-December 2012)

The Board received the following resolution with their pre-meeting packages:

**RESOLUTION  
BOROUGH OF MENDHAM  
PLANNING BOARD**

**WHEREAS**, the Planning Board of the Borough of Mendham has a need to acquire professional Consulting Engineer services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and,

**WHEREAS**, the business administrator has determined and certified in writing that the value of the services will exceed \$17,500; and

**WHEREAS**, Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated has submitted a proposal indicating that they will provide engineering services for 2012 in an amount projected to exceed \$17,500 (including escrows); and

**WHEREAS**, the anticipated term of this contract is 8 months (May-December); and

**WHEREAS**, Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated has completed and submitted a Business Entity Disclosure Certification which certifies that he has not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one year, and that the contract will prohibit him from making any reportable contributions through the term of the contract; and

**WHEREAS**, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

**WHEREAS**, the Planning Board of the Borough of Mendham wishes to retain Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated and

**WHEREAS**, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for “professional services” without competitive bids and the contract itself must be available for public inspection.

**NOW THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Mendham as follows:

1. That the Planning Board of the Borough of Mendham retain Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated to serve as Consulting Engineer for the period of May-December 2012, at a total cost not to exceed an annual \$9,500 such sum as may be duly appropriated for the purposes in the duly adopted municipal budget for 2012: and escrows as required; and

2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.

3. The Business Entity Disclosure Certification and the Determination of Value shall be placed on file with this resolution.

4. That a notice of this action shall be published once in the official newspapers of the Planning Board of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).

5. This Resolution shall take effect as provided herein.

Mr. Cascais made a motion to approve the resolution. Mr. Bradley seconded.

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

In Favor: Henry, Bradley, Cascais, Gertler, Kopcsik, Sharkey, Cavanaugh, Kraft  
Opposed: None  
Abstentions: None

The motion carried. Mr. Ferriero was appointed Engineer.

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**DISCUSSION**

**Small Wind Energy Systems Ordinance:** Mr. McGroarty had provided the Board with an updated draft copy of the proposed Small Wind Energy Systems Ordinance incorporating updates from the April 9, 2012 discussion. The Board did not have any further comments or questions on the ordinance.

Mr. Cascais made a motion to send the draft ordinance to the Borough Council with a recommendation for adoption. Mrs. Kopcsik seconded.

ROLL CALL: The result of the roll call was 7 to 0 with 1 abstention as follows:

In Favor: Henry, Bradley, Cascais, Gertler, Kopcsik, Sharkey, Kraft  
Opposed: None  
Abstention: Cavanaugh

The motion carried. Ms. Callahan will forward the draft ordinance to the Council.

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**Solar Panel Ordinance:** Mr. McGroarty had provided the Board with a memo dated May 8, 2012 outlining issues and items for consideration in a solar panel ordinance.

Board discussed whether they wanted to proceed with consideration of an ordinance raising such items as possibility of solar farms on some remaining large tracts of land, the aspects associated with consideration of solar panels as accessory uses, ground mounted versus roof mounted panels, visual impacts, and environmental impacts such as tree removal.

In terms of large solar farms as principal uses on larger tracts of land, Mr. Henry, Esq. advised the Board that if a use is not permitted in the ordinance, it is prohibited. As for accessory uses, the Board would need to decide from a zoning perspective if they wanted to expressly permit panels as an accessory use or leave the issue to a determination of whether they have become “ordinary and customary” accessory uses. There is always a risk. Mr. McGroarty advised that there is language in the existing Borough Code that accessory uses cannot be located in the front yard. Mr. Henry, Esq. continued that the Board would need to determine if they wanted them in the side yard or limit them to the rear yard.

Addressing how they would be viewed under the existing ordinance, Mr. Henry, Esq. advised that the resident would need to approach the Zoning Officer who would make the determination of whether they were an ordinary and customary accessory use incidental to the primary use. If there was a question on interpretation it would go to the Board of Adjustment. Mr. Ferriero thought it most probable that they would be determined to be an accessory use. Board noted that farmland and trees could potentially be given up for the use. The Borough currently does not have an ordinance for tree removal on residential property.

Chair Kraft questioned whether solar panels should be prohibited in the Historic District, but permitted in all other zones. Mr. Henry, Esq. suggested that they could be permitted in all residential zones, except for the Historic District. Ms. Callahan stated that since they would require a building permit, the Historic Preservation Commission would be reviewing any panel installations. They might view the different locations differently. Mr. McGroarty advised that there should be standards for their review such as non-reflective surfaces that blend in with the roof. Mr. Henry, Esq. stated that the Historic Preservation Commission would conduct their review based on aesthetics, not hard standards. They do not use that same objective criteria, but are more subjective in their review. Board requested that they obtain input from the Historic Preservation Commission and that they be invited to the next Planning Board meeting.

Addressing questions on technology associated with the panels, Mr. Ferriero advised that the photovoltaic systems do not enhance the energy, they just collect it. Technology is evolving and they are now working on shingles for the roof that incorporate technology. Solar may not be an accessory use going forward. Chair Kraft noted that Building Code then becomes a big issue.

Mr. Cavanaugh questioned whether visibility was a key issue with panels. If so, how did they differ from an accessory structure if they could not be seen. In discussion on roof systems and their relationship to building height, Mr. Ferriero suggested that it is not so much the building height that becomes important, but how far the panels would be permitted to extend from the existing roof. In terms of placement, they may not start at the peak of the roof if that is maximum height, but would begin lower where they would be under the permitted height and extend out. He recommended a limitation for roof mounted panels not exceeding “x” inches from the roof. Mr. McGroarty commented that the existing ordinance for building height includes anything roof mounted. Mr. Ferriero recommended an exclusion be made for solar panels as the other things on a roof are points, i.e. antennae. Panels are mass on the roof.

Addressing Ms. Callahan’s concern on the potential creation of a “wall-like effect” to neighbors from ground mounted panels particularly in the smaller size zones, Mr. Ferriero recommended that a limitation be placed on the scale, comparable to that of the existing regulations for an accessory building. In that way, the panels would be in scale with the structure. Today that relationship is 50% of the principal structure. The ordinance could say, for this purpose, that the footprint (the projected horizontal area) could be used for calculating the accessory structure “coverage” relative to the principal structure. If someone wanted more, they would go to the Board of Adjustment.

Responding to Mr. Cavanaugh on whether the only externality is visibility, Mr. Ferriero stated that too many panels would result in overdevelopment, more runoff and tree removal. Light, air and open space are needed. Chair Kraft commented that the ecology could be changed.

In further discussion on visibility, Chair noted that they could make a stipulation that no solar panels be visible from the streetscape or a public way in the Historic District. Board discussed the need to place panels where their benefit can be derived. Mr. Cascais noted that if one cannot use roof mounted panels due to visibility, then they might cut trees to place ground mounted panels in

the rear yard. Chair noted that while the Board had decided not to consider a tree ordinance in the past, it might be time to reconsider it.

The Board also explored the impact from surrounding properties to the resident who installed solar panels. Should a resident on an adjacent lot put up fencing or trees to screen panels on another property, it could impact the effectiveness of the neighbor's panels. There is nothing that can be done about that. Mr. McGroarty noted that in some of the newer developments in other towns, easements are written into the approvals at the time of development. He also advised the Board that some commercial uses are creating solar panels over parking areas.

In questioning the Board on their desire for an ordinance, Chair stated that they could (1) do nothing, (2) do nothing and use the existing accessory structure ordinance, or (3) develop a solar ordinance with limitations. After polling the Board for comments, Chair announced that he determined that 6 members are in favor of the third option, but 3 would like less regulation and 3 more. Two members would like the accessory use ordinance strengthened. He requested that Mr. McGroarty make a list of what the Board can and cannot do in an ordinance and the discussion continue at the June 11 regular meeting of the Board.

#### **OTHER BUSINESS**

Chair stated that the Black Horse Inn had eight tables with dining in their parking lot on Mother's Day. Outdoor dining is not permitted and this also increases the seating permitted under the sewer approval. Mr. Ferriero will advise the Zoning Officer.

#### **TRC UPDATES (For information only)**

Mrs. Kopcsik provided an overview of the applications that would come before the Technical Review Committee on May 21.

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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 9:40 p.m. The next regularly scheduled meeting of the Planning Board will be held on **Monday, June 11, 2012 at 8:00 p.m.** at the Garabrant Center, 4 Wilson St., Mendham.

Respectfully submitted,

Diana Callahan  
Recording Secretary







