

2020 MASTER PLAN REEXAMINATION REPORT

MENDHAM BOROUGH **Morris County, New Jersey**

PLANNING BOARD

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APRIL 13, 2020

The original of this document was signed and sealed
in accordance with N.J.S.A. 45:14A-12.

Prepared by:



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MENDHAM BOROUGH
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Introduction

The New Jersey Municipal Land Use Law (MLUL) (N.J.S.A. 40:55D-1 et seq.) requires that each municipality within the State of New Jersey provide for a periodic reexamination of its master plan and development regulations at least every 10 years, and that the Planning Board shall prepare and adopt by resolution a report on the findings of such reexamination (N.J.S.A. 40:55D-89).

The reexamination report shall address the following five components:

- a. The major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination report.
- b. The extent to which such problems and objectives have been reduced or have increased subsequent to such date.
- c. The extent to which there have been significant changes in the assumptions, policies, and objectives forming the basis for the master plan or development regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, collection, disposition, and recycling of designated recyclable materials, and changes in State, county and municipal policies and objectives.
- d. The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared.
- e. The recommendations of the planning board concerning the incorporation of redevelopment plans adopted pursuant of the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.) into the land use plan element of the municipal master plan, and recommended changes, if any, in the local development regulations necessary to effectuate the redevelopment plans of the municipality

1. Major Land Development Problems & Objectives

The major problems and objectives relating to land development in the Town at the time of the adoption of the last reexamination report which have changed.

Mendham Borough adopted its last comprehensive Master Plan in October 2006 and its last Reexamination Report in October 2016.

The major problems, objectives, and recommendations that were identified in the 2016 Reexamination Report included areas such as, land use, circulation, conservation, public utilities, and housing elements.

At the time, the Borough was considering Village Center clustering for a variety of properties in the Village Center area including:

- deNeufville (Block 1801, Lot 16)
- Cosma (Block 203, Lot 79)
- Hilltop School (Block 1501, Lot 35)

The 2006 Land Use Plan recognized that the Cosma tract was better suited for a park and open space and the Hilltop School remained open as a school thus eliminating that site from consideration for the cluster zoning. The Land Use Plan did recommend that both sites be studied at the time of the next Master Plan Reexamination, wherein it stated:

“The Cosma tract’s natural characteristics and location lend themselves to continued use for local park and open space. Use for residential cluster development is not considered appropriate at this juncture. It is recommended that the Planning Board actively monitor the land use status of this property and reconsider it at the time of the next reexamination.”

The Hilltop School site was not recommended at the time because it was actively being used as a school. Ultimately, the remaining tract, the deNeufville property was chosen for the Village Cluster Zone.

Main Street Corridor

The Land Use Plan recommended further study by the Planning Board to determine the feasibility of incorporating certain design standards into the Borough’s land use regulations to enhance the Main Street Corridor. These objectives included:

- To acknowledge the importance of gateways to the Borough, one of which is at Cold Hill Road and East Main Street

- To provide an appropriate land use transition between Cold Hill Road on the east and the Historic Business Zone to the west
- To form the basis for village streetscape design features which would support and coordinate with the Historic Business Zone standards; the design standards contemplated would cover such items as pavement types, street lights, landscaping materials, street trees, and street furniture (i.e. benches, signage and sign lighting, planters, etc.)

Historic District Overlay Zone

Expansion of the Historic District Overlay Zone was recommended along Main Street extending to the western boundary of the Borough and to extend north along Orchard Street between Adams Place and the existing historic properties along East Main Street.

In-Home/Offices and Businesses

The Master Plan identified several “key questions” to be explored in the context of the existing definition for home-occupation, as follows:

- Which accessory uses are appropriate within the principal structure or in the separate buildings?
- How are large “accessory” buildings to be distinguished from other non-residential uses which may be clearly inappropriate to a residential setting?
- How can an ordinance regulating such structures and uses best speak to the fact that an accessory use in a residential setting should be clearly customary and incidental to single-family use?
- Are there accessory uses which would be appropriate within the principal residential structure but not appropriate in a separate accessory structure on the same lot?

Multi-Generational Family Housing

Citing the possibility of applying the Village Cluster option to the deNeufville tract as a way of advancing the multi-generational character of Mendham Borough, the Plan recommended allowing in-house accommodations for family members and needed domestic help. It called for such living spaces to be connected to the main residence and be deed-restricted against open-market rental for other tenants.

Constraints on Development

Limitations of sanitary sewer and potable water system capacities, environmentally sensitive areas, and an insufficient amount of customer parking in the Historic Business District were noted a “formidable constraints” to “reasonable growth, development, and redevelopment” in accordance with the Borough’s Vision and Master Plan goals and objectives. Water and sewer issues and environmental constraints are addressed in other Plan Elements.

With regard to parking, the Plan offered the following observations and recommendations concerning the “quadrant” at Main Street and Hilltop/Mountain Avenue:

- In the northwest quadrant, only the Black Horse Inn provides a significant amount of off-street parking for its own customers. The Planning Board is aware that an in-depth study of the northwest quadrant is needed to address lack of parking.
- In the southeast quadrant, the loss of parking spaces which were withdrawn from public use by St. Mark’s Church has increased pressure on the remaining spaces which serve the existing commercial uses on Main Street and Hilltop Road.
- In the southwest quadrant, an extension of the Bowers Building parking area and the construction of a walkway between the Bowers building and the St. Joseph’s Church parking lot is under consideration.
- In the northeast quadrant, a similar extension of parking facilities would also be appropriate.

The Plan also recommended the follow “*neo-traditional*” planning concepts to “*promote the success of a commercial village environment...*”:

- The development of shared community parking lots.
- Use of shared driveway entrances and rear yard driveways between parking lots to simplify traffic circulation – the ultimate goal is to establish an interconnected circulation system of parking and driveways to the rear of the buildings, by-passing the street frontage.
- The construction of sidewalks and walkways, as a key public improvement, approved by the Mayor and Council an overall parking plan is established.
- The installation of low hedges and fences to give visual definition to the street edge and increase the privacy and attractiveness of the individual uses.

Highlands Region

The entire Borough is located within the Planning Area of the Highlands Region. The Highlands Regional Master Plan had not yet been released at the time of the 2006 Master Plan therefore the Land Use Plan Element stated that the Planning Board intended to review and consider the “...*Highlands Plan and its regulations at the time they are issued.*”

Circulation Plan Element

The Circulation Plan Element offered an in-depth analysis of the Borough’s road network guided by the following objective:

The overall goals of the Circulation Plan are reduction in access points along the roadways, shared access, shared parking, and integration of properties to allow for the appropriate distribution of traffic. In addition, pedestrian connections between the available off-street parking areas and the adjacent roadways and intersection must be included, so as to provide a continuous pedestrian circulation system.

To better facilitate traffic flow along Main Street and to key points such as Hilltop School, the high school, and Kings Shopping Center, the plan offered specific parking proposals or circulation improvements for those sites. The Circulation Plan offered proposals to limit parking along Main Street, Mountain Avenue and Hilltop Road, among other areas.

The following was noted regarding Kings Shopping Center Driveways:

Main Street and Kings Shopping Center Driveways

It is recommended that a traffic study be prepared for any redevelopment of the shopping center, not only address driveway operation, but also to assess on-site circulation for vehicles and pedestrians, and to address the need for dedicated right-turn lanes at site driveways. Currently, traffic is controlled on Friday evening and Saturdays between 10:00 a.m. and 2:00 p.m. by a police officer. This arrangement should continue as long as the current configuration of the intersection remains. Based upon the traffic count data and observations, it is recommended, that at a minimum, left turn lanes be provided on Main Street to accommodate movements into the site. Left-turn lanes may not be required at all driveways. The location and length of the left-turn lanes would be determined through a traffic study for the redevelopment of the shopping center.

The Circulation Plan also focused on ways to improve safe and efficient pedestrian networks and crossings and offered recommendations such as textured pavement at crosswalks and wide painted cross-hatchings. The following was noted regarding Kings Shopping Center:

- Provide pedestrian crosswalks across Dean Road and across Main Street near the Kings Shopping Center. The location will have to be coordinated with any plans for the driveway re-design, so that pedestrians are crossing outside the limits of any left-turn lanes.

The Conservation Plan Element recommended local controls to restrict construction and tree removal on steep slopes; to impose stricter limits “...of *septic disposal setbacks and on distances between septic disposal fields and wells*”; to adopt a wellhead protection ordinance; to provide for tree protection both in new development and on existing residential properties; and to establish landscaping standards, including an approved list of plantings with focus on native species for new subdivisions.

A Stormwater Management Plan was adopted on April 11, 2005. Stormwater control ordinances were enacted by the Borough to comply with current New Jersey Department of Environmental Protection (NJDEP) regulations. The MLUL now requires review of the plan and ordinance(s) as part of every Master Plan Reexamination.

Public Utilities Plan Element

A key concern was the condition of the Borough’s sanitary facilities, the efforts to date to address the problems, and continuing problems, including the following.

- Recent engineering studies at the time found that the Borough’s existing collection system is plagued by serious infiltration of groundwater and inflow of surface runoff during rain events or snow melts. This infiltration and inflow (I&I) have created operational challenges and regulatory concerns due to exceeding the permitted capacity of the plant.
- The data showed that a combination of high seasonal water usage from public and private users and I&I volume result in the plant exceeding its 450,000 gallon per day average limit imposed by the state permit.
- The Borough decided to undertake a systematic I&I analysis. Areas where infiltration is most likely are being identified and the Borough began a project

to evaluate the best methods to reline aged and crackling sewer mains, lining of manholes, and possible replacement of laterals.

- The refurbishing of the collection system is one of the most serious issues facing the Borough. The methods of improvement have been undertaken by the Borough is hoped to create a cushion against the 450,000-gallon ceiling. When the infiltration problem is fixed and if, at that time, there is latitude for reconsidering the criteria in the sewer ban ordinance, connections in the commercial business zone should be considered to allow for a greater diversity of appropriate businesses.

Housing

The 2006 Master Plan included an Appendix containing the Borough's Housing Element and Fair Share Plan (HEFSP) dated August 2005 with Appendix A, COAH's Resolution of May 11, 2005 granting an extension of Substantive Certification, and Appendix B, a draft growth share ordinance to implement the Fair Share Plan. The HEFSP was developed based on COAH's rules in place at that time which linked new affordable housing obligation to the amount of residential and nonresidential growth anticipated in the municipality over the Third Round period, thus the term "growth share".

The Borough of Mendham revised its Third Round Housing Element in 2005, 2008, and 2016, each time in order to address the Borough's Third Round Affordable Housing Regulations. The Borough last petitioned COAH on July 16, 2009 for certification of the Housing Element and Fair Share Plan that proposed sixty (60) new units and ten (10) rehabilitation units.

2. Extent of Reduction/Increase in Problems & Objectives

The extent to which each of the problems and objectives listed in item 1 above, have been reduced or have increased subsequent to the date of the last reexamination report.

The primary focus of this Master Plan Reexamination Report is on the changes in State law and court cases that have required municipalities to submit updated Housing Elements and Fair Share Plans to Superior Court for a determination of compliance with the Fair Housing Act and the municipality's obligation to provide its fair share of affordable housing. As a result, the issues faced at the last time of the Master Plan Reexamination Report will primarily be addressed through this lens. The issues reported in Section 1 not related to affordable housing should be reviewed at the next reexamination of the Master Plan, which is required at least every ten years or by 2026.

The problems and issues related to affordable housing regulation which were identified in the 2016 Reexamination Report remain relevant to the extent that Third Round Housing regulations were changing and the Borough was beginning to address the changes.

Affordable Housing

Much has occurred in the area of affordable housing since the last master plan reexamination report and even more so since the 2006 Master Plan. Growth share methodology was invalidated by the courts and COAH is no longer the entity in charge of certifying municipal Housing Elements and Fair Share Plans. As a result, the affordable housing obligation for municipalities is also not determined by COAH. This has resulted in several different groups generating affordable housing obligation projections, however one set of obligations for the entire state has not yet been determined.

In addition, the Borough's most recent Housing Element and Fair Share Plan was adopted in 2016 using 2010 Census data. Since that time, both the 2010 U.S. Census and one (1), three (3), and five (5) year census data estimates based on the American Community Survey (which replaced the Census long form) were conducted and data from these two sources are available for review and analysis.

3. Significant Changes in Assumptions, Policies, Objectives

The extent to which there have been significant changes in the assumptions, policies, and objectives forming the basis for the master plan or development regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, collection, disposition, and recycling of designated recyclable materials, and changes in State, county and municipal policies and objectives.

Affordable Housing

The Borough of Mendham secured certification of its First Round Fair Share Plan from the Council on Affordable Housing (COAH) on May 20, 1987. The Borough petitioned COAH for the Second-Round Substantive Certification, including with its petition a Second Round Housing Element and Fair Share Plan on March 3, 1995 to meet a 31-unit obligation. COAH granted Substantive Certification on June 5, 1996. This Second-Round plan included twenty-eight (28) prior cycle credits for Mendham Area Senior Housing (MASH) units completed in 1980, eight (8) MASH units completed in 1989, and three (3) units which had previously been rehabilitated pursuant to COAH's rules for a total of thirty-nine (39) credits.

Mendham Borough adopted a development fee ordinance on July 3, 1995 and subsequently had a Spending Plan approved by COAH on April 5, 2000, which authorized the use of the funds collected via the development fee ordinance. On May 11, 2005 COAH granted Mendham Borough extended substantive certification through December 20, 2005. The Borough has since prepared two additional Third Round plans, first in August 2005 and then in December 2008 in response to the evolving nature of the third-round rules.

COAH adopted the Third-Round rules in 2004 (N.J.A.C. 5:94 Procedural and N.J.A.C. 5:95 Substantive) which were invalidated by an Appellate Division decision in January 2007. COAH then adopted modified rules in June 2008 (N.J.A.C. 5:96 Procedural and N.J.A.C. 5:97 Substantive) which, in turn, were followed by additional legal challenges. Following adoption by the Mendham Borough Planning Board of a Housing Element and Fair Share Plan on December 9, 2008 based upon the revised "growth share" methodology established by COAH, a petition for substantive certification was submitted to COAH and deemed complete on July 16, 2009.

In a decision issued on October 8, 2010, the Appellate Division invalidated a number of provisions in N.J.A.C. 5:97 including its central component, the "growth share" methodology; a decision later upheld by the New Jersey Supreme Court on September 26, 2013. COAH again drafted revised Third Round rules (N.J.A.C. 5:98 Procedural and N.J.A.C. 5:99 Substantive) which were to apply to a period commencing on November 17, 2014, however; COAH deadlocked on a vote to officially adopt the new version of the rules

at its October 20, 2014 meeting, which resulted in the March 15, 2015 decision by the N.J. Supreme Court [In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing] to remove COAH from the process and placing jurisdiction back with the courts.

A current version of the Borough's Housing Element and Fair Share Plan (HEFSP), adopted by the Planning Board on March 14, 2016 utilizes the affordable housing obligation as determined by Econsult Solutions in their report entitled, "*New Jersey Affordable Housing Need and Obligations*," dated December 30, 2015. This HEFSP was adopted at the onset of Mendham Borough's submission to Superior Court for a declaratory judgment of its HEFSP, which was filed on July 2, 2015. During the course of Mendham's court case, it became apparent that the Econsult numbers would not be accepted by the courts.

Fair Share Housing Center was allowed by the Supreme Court to intervene on all affordable housing cases in the State without filing a motion to intervene. FSHC intervened in Mendham's case and put forth its own obligation from its expert, David N. Kinsey, PhD, FACIP, PP, who produced a May 16, 2016 report "*New Jersey Low- and Moderate-Income Housing Obligations for 1999-2025 Calculated Using the NJ COAH Prior Round (1987-1999) Methodology*." A trial was held in Mercer County on this report and methodology and on the Econsult report and methodology. A court appointed Special Master, Richard Reading, assisted Judge Jacobsen in this trial and ultimately prepared a report that determined the Mercer County number based on Judge Jacobsen's decision in that case in March 2018. Soon after, Econsult prepared an extrapolation of Richard Reading's methodology used in the Mercer County decision for all municipalities in the State. Additionally, the Morris County vicinage hired Richard Reading to prepare a report applying his methodology to all Morris County municipalities. The Borough ultimately came to a settlement agreement with FSHC using the obligation prepared by Richard Reading as extrapolated from the Mercer County Jacobsen decision. This settlement agreement was dated December 26, 2019 and fully executed on January 2, 2020.

Additionally, during the course of Mendham's court case, V-Fee Realty Investments, LLC intervened and requested that the King's Shopping Center site be included in the Borough's HEFSP as a location to provide affordable housing. The Borough entered into a settlement with V-Fee Realty LLC to permit the construction of a 75-unit apartment building that would include 15 affordable units at the shopping center site.

Following the settlement agreement, the court ordered a Fairness Hearing on the terms of the settlement, which was held on January 24, 2020. The Honorable Michael C. Gaus held the hearing on January 24, 2020 and found the terms of the agreement to be fair and adequately protecting the interests of low- and moderate-income households in the region. Several compliance items were ordered at that hearing, including a requirement for the Borough to adopt a revised HEFSP that includes the terms of the settlement agreements. Additionally, all implementing ordinances required to implement the terms of the HEFSP and the settlement agreements must also be adopted by the Borough. The Borough has a

compliance hearing scheduled on June 19, 2020, where compliance with this order will be reviewed by the court.

Specific Recommended Changes to the Master Plan

The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared.

This Reexamination Report recommends a revised Housing Element and Fair Share Plan be adopted by the Borough Planning Board that incorporates the terms of the two settlement agreements from Mendham's Declaratory Judgment case in Superior Court.

4. Specific Recommended Changes to Development Regulations

The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared.

This Reexamination Report recommends replacing the Borough of Mendham's existing affordable housing ordinance with a revised affordable housing ordinance that complies with current standards. Such changes will address the latest State regulations and guidelines that are to be followed for the Borough's Third Round housing obligation. Any additional ordinance updates or changes related to affordable housing in order to meet the requirements of Mendham's court case should be adopted.

The Borough should also adopt two inclusionary overlay zones to implement the Borough's Housing Element and Fair Share Plan. One overlay zone is for the King's Shopping Center, Block 81, Lot 20 and the second overlay zone is for the property owned by St. John the Baptist where Daytop School is located, Block 18.01, Lot 5.

King's Shopping Center – Inclusionary Overlay Zone

The King's Shopping Center governs 3.36 acres and includes Block 81, Lot 20. It is located along West Main Street/County Route 510 in Mendham Borough.

The Borough of Mendham is entering a settlement agreement with the owner of the King's Shopping Center to construct a 138,000 square foot, four (4) story apartment building with seventy-five (75) multi-family housing units and a twenty (20) percent set-aside; therefore, allowing for fifteen (15) affordable rental units. The easterly portion of the existing Mendham Health and Racquet Club, located at the rear of the shopping center will be removed for construction, and the westerly portion would be expanded. The inclusionary zone would facilitate development of this portion of the shopping center property for the residential development as described.

St. John the Baptist Property - Daytop School – Inclusionary Overlay Zone

The property owned by St. John the Baptist Church upon which the The Daytop School is located occupies 26.5 acres and consists of Block 18.01 and Lot 5, located along West Main Street/County Route 510 in Mendham Borough. The Borough is proposing an overlay zone, which will permit 17.5 units to the acre, for a total of 464 units, with a twenty (20) percent set-aside resulting in the overlay zone yielding ninety-three (93) affordable housing units. The proposal supports the Borough's Master Plan goal of creating a broad spectrum of housing options that enable residents to raise their families and to remain in the community once their children have grown in order to foster a multi-generational community. This overlay zone would be triggered by the availability of sufficient sewer capacity to serve the development.

5. Changes Recommended for Incorporation of Redevelopment Plans

The recommendations of the Planning Board concerning the incorporation of redevelopment plans adopted pursuant to the "Local Redevelopment and Housing Law," into the land use plan element of the municipal master plan, and recommended changes, if any, in the local development regulations necessary to effectuate the redevelopment plans of the municipality.

None to report at this time.

**RESOLUTION OF THE
MENDHAM BOROUGH PLANNING BOARD
MORRIS COUNTY, NEW JERSEY**

**REEXAMINATION OF THE BOROUGH OF MENDHAM MASTER PLAN PURSUANT TO
N.J.S.A. 40:55D-89 SPECIFICALLY WITH RESPECT TO THIRD ROUND AFFORDABLE
HOUSING REGULATIONS**

WHEREAS, the Planning Board of the Borough of Mendham, Morris County, State of New Jersey (“Planning Board”) adopted the current Borough of Mendham Master Plan pursuant to Article 3 of the MLUL (N.J.S.A. 40:55D-28) in August 2006; and

WHEREAS, N.J.S.A. 40:55D-89 provides that each municipality within the State of New Jersey periodically re-examine its Master Plan policies and assumptions, zoning restrictions, and site plan and subdivision regulations, and prepare and adopt by resolution a report on the findings of such reexamination; and

WHEREAS, the Planning Board has conducted such periodic reexaminations of the Master Plan since the initial date of its adoption and adopted reports setting forth its findings of each such reexamination, in accordance with the provisions of N.J.S.A. 40:55D-89; and

WHEREAS, the Borough of Mendham adopted its most recent Housing Element and Fair Share Plan on March 4, 2016 as it seeks to provide its constitutional fair share of the regional present and prospective need for affordable housing; and

WHEREAS, the New Jersey Supreme Court in N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing instructed municipalities to revise and submit their Housing Element and Fair Share Plan and implementing ordinances to the Courts in order to be deemed constitutionally compliant; and

WHEREAS, the Planning Board has determined after reexamination of the Master Plan, receipt of public comment, and public deliberation regarding same, that the Borough of Mendham Master Plan and ordinances must be amended to incorporate the proposed changes pursuant to the requirements of the New Jersey Courts; and

WHEREAS, the Planning Board has determined that the adoption and implementation of the updates to the Borough of Mendham Master Plan and ordinances are in the public interest and protects public health and safety and promotes the general welfare.

NOW, THEREFORE BE IT RESOLVED, that the Planning Board hereby makes and adopts the findings of fact and all recommendations as set forth in the 2020 Mendham Borough Master Plan Reexamination Report," dated April 13, 2020, prepared by Jessica C. Caldwell, P.P., A.I.C.P., a reexamination of the Borough of Mendham Master Plan and development regulations conducted specifically to address the task of providing for the regional present and prospective fair share of affordable housing.

Signed: _____



Richard G. Kraft, Planning Board Chair

Attest: _____



Lisa Smith, Planning Board Administrator

Dated: _____

4/16/20