

**MINUTES OF THE
MENDHAM BOROUGH PLANNING BOARD
March 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 7:35 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 (7:55 p.m.)	Mr. Kraft - Present
Mr. Bradley – Present	Mrs. Kopcsik - Present
Councilman Carr – Present (til 8:20 p.m.)	Mrs. Lichtenberger - Present
Mr. Cascais – Present	Ms. Sandman - Absent
Mr. Gertler – Present	

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

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

APPROVAL OF MINUTES:

Ms. Callahan introduced minor editorial changes provided by Board members. On motion made by Mr. Cascais, seconded by Mrs. Lichtenberger and carried, the minutes of the regular meeting of January 12, 2009 were approved with the changes.

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.

ORDINANCE MASTER PLAN CONSISTENCY REVIEW

Ordinance #1-09: An Ordinance of the Borough of Mendham, County of Morris, and State of New Jersey to amend and supplement Chapter 215, Zoning, Section 215-29, supplementary height and bulk limitations, Subsection 215-29(B), Fences, of the Code of the Borough of Mendham

Board reviewed the revisions to the fence ordinance as introduced by the Borough Council and forwarded with the February 18, 2009 letter from the Borough Clerk. Only discussion was to request a minor change to clarify the citation for 215-14 I (3).

Mr. Cascais made a motion that the fence ordinance revisions were consistent with the Mendham Borough Master Plan. Mr. Gertler seconded.

ROLL CALL: The result of the roll call was 8 to 0 as follows with 1 abstention:

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

The motion carried. Ms. Callahan will prepare a letter for the Council.

DISCUSSION

Build Out – Status Report/Next Steps: Mr. Ferriero reported to the Board that the Build-Out data for Module I required for the Highlands under the Initial Assessment Grant was submitted on time. A parcel by parcel review of lots in Mendham Borough was conducted to determine developable versus non-developable acreage. After review by the Highlands, the information will come back to the Borough for Module II in which sewer and water capacity as well as existing zoning will be applied. The Highlands model will determine developable land. Mr. Ferriero expressed his opinion that it will result in virtually no development.

Responding to Mr. Kraft on whether it would include lots that are subdividable, Mr. Ferriero thought it would. Even if there is a lateral near the property, if it is not connected, it could not be. Mr. Kraft was concerned that the Borough would be opened to litigation dealing with the taking of property. Mr. Ferriero stated that he and Mr. Humbert had to sign off on property and were very concerned, but he has been assured by the Highlands that the information will not be used on a lot by lot basis.

In terms of the DEP Wastewater Management Regulations, Mr. Ferriero advised that the Highlands has stated that the intent to opt in was non-binding, but the DEP is saying that for wastewater management purposes, the municipality has opted in. Morris County is returning to what the law says, and they will submit the Wastewater Plan that way. If the DEP rejects the plan no permits will be issued even for geothermal wells.

Mr. Carr expressed concern that the Borough would not be able to make a decision. Mr. Kraft questioned whether applications should be heard. Mr. Henry, Esq. advised that applications should be heard and a condition for other approvals should be added to resolutions.

Addressing the County meeting of March 30, Ms. Callahan reported that Ms. Sandman asked that Mr. Wright attend. Mr. Ferriero will attend and Mr. Kraft will also attend representing the Planning Board. Responding to Ms. Callahan on whether the DEP calculations and the Highlands calculations will be the same, Mr. Ferriero stated since DEP considers us as “opting in” the numbers would be the same.

Ms. Gemberling stated that at the land use training session, it was clear that from the DEP perspective, they are blind to the line between Planning and Preservation areas. Responding to her question on whether the Morris County Wastewater Management Plan was consistent with the Highlands, Mr. Ferriero advised that there is only one municipal plan in Morris County that is consistent. The requirement for consistency has moved from the municipality to the County.

Responding to Ms. Callahan on the legal implications if a town went with the DEP wastewater management plan and not the Highlands, Mr. Ferriero stated that the municipality would need to amend zoning. Mr. Henry, Esq. stated that in terms of the Highlands legal shield, they have a cap on funds and have not defined their support.

Board discussed the difficulty in understanding the specifics of what the Highlands wants given the complexity of the issues and the document. Responding to Mr. Carr on how we make a decision, Mr. Ferriero stated that we need to work our way through the process. Mr. Kraft cautioned that not following the process could also have legal ramifications.

Ms. Gemberling noted that the Highlands Land Capability maps would provide the Planning Board with insight and at a minimum, they should understand the implications. Mr. Humbert stated that in the end, he believes that DEP will be in charge. The two controlling numbers will be 25 acres for meadows and 88 acres for woodlands. He and Mr. Ferriero will be going through the exercise parcel by parcel. The vacant acreage will then have the standards applied and the land use maps will be applied.

In terms of COAH, Mr. Ferriero stated that with limited development, it would be reduced. Mr. Kraft stated that we need to see the results of the lawsuit of the League of Municipalities. Mr. Ferriero cautioned that with all the grant money given out by the Highlands, when they determine their numbers, the Highlands will take advantage of press indicating that their numbers are solid as they have been given to them by the municipalities.

Mr. Ferriero advised that there will also be requirements for variances if a lot does not meet the criteria. MLUL will still be in effect. The municipality will have had to determine where the gallage and the lot sizes will be distributed.

Addressing Ms. Callahan’s question on how existing homes will be affected, Mr. Ferriero stated that there are Highlands exemptions for single family homes. He did not know how the change in

the number of bedrooms from 2 to 3 or 4 might be treated if it was considered as using more gallorage. Homes with 3 bedrooms or above do not increase the flow.

Responding to Ms. Gemberling on the differences in the calculations of the DEP and Highlands, Mr. Ferriero stated that the Highlands uses HUC 14 and DEP HUC 11. The HUC 14 is a smaller area than the HUC 11. Ms. Gemberling noted that we do not have a lot of HUC 14s.

Responding to Mr. Cavanaugh on why they were trying to stop development, Mr. Ferriero stated that there are environmental issues. The DEP has developed a culture that is negative.

Board discussed the need to understand how different our existing ordinances are from the Highlands requirements. Mr. Humbert stated that his initial review of the Initial Assessment Report as provided by David Banish indicated there would be a lot of work to do. That is going to impact the cost of opting in should the Borough decide to do that.

Addressing Mr. Gertler's question on how existing lots of size less than the new requirements would be treated, Mr. Ferriero stated that the lot would be non-conforming and the resident would need to go for a variance. The State law is implemented at the local level. Mr. Henry, Esq. provided an example explaining that today given a 100 acre plot in a 5 acre zone, a subdivision of 20 lots (ignoring roadways and design efficiencies) might be feasible. Under the new regulations, if a variance is required, an applicant might only be able to prove in 8 lots on the same number of acres. Mr. Cavanaugh noted that the decision could be litigated. Mr. Ferriero stated that the Highlands might even get involved in an application.

Mr. Kraft stated that we must work through the process. After the Initial Assessment Report meeting, the Board will be provided with the information. Mayor Henry stated that we must not just focus on the Highlands, but must consider the OSG State Plan process as well. He is setting up a meeting with Mr. Spenelli.

Board briefly discussed the Village Center and whether it could or should be extended.

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2009 Issue Prioritization: Board had been provided with background information on various potential ordinances before the meeting. Chair requested discussion on Board preferences for prioritization.

Mayor Henry noted that there were several applications before the Board of Adjustment for multigenerational housing. The future trend combined with what we have approved already indicates that it should be a top priority. In terms of the Occupancy Limitation ordinance, there have been issues in surrounding towns and our police department has had some issues in local apartments. He would like to see that a second priority.

Mr. Gertler stated that multigenerational housing is important for the Board to consider. Given the economy we may see more parents moving in with children and children moving in with parents. Mr. Henry, Esq. advised that there is a larger category of accessory dwellings that could be considered. The multigenerational housing is a subset of that. The Board would need to determine its scope. There have been some cases on accessory dwellings from a zoning point of view that would not limit the type of person that could live in them. Mr. Kraft reviewed Planning Board history that they had previously decided not to permit accessory dwellings as eventually they become apartments. Enforcement is an issue. Ms. Callahan also requested the differences in the zone sizes be reviewed carefully.

Mr. Ferriero advised that he would put well head protection last. Ms. Gemberling added that the remaining ordinances would need to comply with Highlands if we go that route.

Mr. Gertler volunteered to Chair the multigenerational subcommittee consisting of Ms. Gemberling, Mr. Cascais and Mr. Bradley. Mrs. Kopcsik will Chair the occupancy limitation subcommittee. Mayor Henry and Mr. Kraft will participate.

In terms of the Lighting Ordinance, Mr. Henry, Esq. advised that the sample provided by Mr. Ferriero pertains to commercial properties only. Mrs. Kopcsik stated that the Environmental Commission is concerned about glare particularly in the smaller zones. Mr. Henry, Esq. advised that they can only require changes in the future. Existing lighting would remain. Mr. Ferriero recommended that the site plan issue be handled first. The proposed ordinance is consistent with the Main Street Corridor ordinance.

Ms. Gemberling recommended that the goal should be to minimize lighting and that we should contact ANJEC for other NJ ordinances. A mission statement in the beginning of the ordinance might be appropriate. The Environmental Commission should list their goals. At the present time there is no recourse for the resident. Mrs. Lichtenberger recommended that the Mendham Messenger be used. Mr. Ferriero supported the idea and agreed that public education was important. Mrs. Kopcsik recommended that the Board look at the ordinance from Union Township.

Mr. Kraft recommended that after the multigenerational housing, occupancy limitation, and commercial lighting committees are completed, the residential lighting be revisited. In the interim, he requested that Mrs. Kopcsik take the ideas from the discussion back to the Environmental Commission.

Historic District Expansion (Phase I): The Board had been provided with an updated map of Phase I, the alignment of the existing Historic District with the existing National Registry District, in their pre-meeting packages.

Ms. Callahan advised the Board that she had worked with the Historic Preservation Consultant and Geoff Price to prepare the map based on Planning Board previous direction. Six additional properties are being proposed. The one issue she pointed out to the Board was the difference in significant time period utilized to determine contributing and non-contributing buildings. The new study uses the early 1940's whereas the old study utilized the early 1930's.

Mr. Humbert questioned whether there would be any chance of an interpretation of conforming versus non-conforming that could be construed from the data. Mr. Henry, Esq. did not see any issue arising between the dates of contributing versus non-contributing for historical study purposes and the building status of conforming versus non-conforming as would relate to zoning.

Mayor Henry made a motion to send the map to the Council with the recommendation that the Mendham Borough Historic District be re-drawn to include the new properties and be aligned with the existing National Registry Listing. Mr. Cascais seconded.

ROLL CALL: The result of the roll call was 9 to 0 as follows:

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

The motion carried. Ms. Callahan will forward the map to the Council.

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Communications: Mr. Henry, Esq. advised the Board that caution with email messages should be exercised. No communications among a quorum should take place that could be construed as a meeting. He also advised that all email communications are public documents and should be treated as such. A short Board discussion followed.

TRC UPDATES

Mrs. Kopcsik provided an update on the TRC applications.

ADJOURNMENT

There being no additional business to come before the Board, on motion made, seconded and carried, the meeting was adjourned by Chair Kraft at 9:35 p.m. The next regular meeting of the Mendham Borough Planning Board will be held on Monday, April 13, 2009 at 7:30 p.m. at the Garabant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan
Recording Secretary

