

**MINUTES OF THE TOWNSHIP OF MENDHAM PLANNING BOARD
REGULAR MEETING HELD OCTOBER 19, 2022**

The meeting was called to order by Chairman Giordano at 7:01 p.m., who asked for a roll call.
Upon roll call:

ROLL CALL

PRESENT: Mr. Orlins, Ms. Neibart, Ms. DeMeo, Mr. Johnson, Mr. Maglione, Chairman Giordano

ABSENT: Mr. D'Emidio, Mr. Perri, Mr. Mayer

Others present: Mr. Andrew M. Brewer, Mr. Dennis Keenan, Mr. Paul Cancilla, Mr. Roy Messaros

SALUTE TO THE FLAG

ADEQUATE NOTICE of this meeting of the Mendham Township Planning Board was given as follows: Notice was sent to the Daily Record and the Observer Tribune on January 7, 2022 and Notice was filed with the Township Clerk on January 7, 2022.

This meeting is a quasi-judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the Board may legally consider in reaching a decision with decorum and civility appropriate to a quasi-judicial hearing being maintained at all times.

OATH OF OFFICE

Mr. Ted Maglione was sworn in as Alternate #2 for the year 2022.

MINUTES

The minutes to the August 17, 2022 Regular was approved. Chairman Giordano and Mr. Johnson abstained.

APPLICATION – PB 22-04

LAWRENCE FARMLAND, LLC

Block 147, LOTS 42.06, 42.07, 42.08, 42.12, 42.13, 42.16

PRELIMINARY AND FINAL MAJOR SUBDIVISION APPROVAL

Mr. Tom Malman, attorney from Day Pitney, LLP, made an appearance on behalf of the applicant. Mr. Malman stated that this is an application for preliminary and major subdivision approval and that the property is located off of Hardscrabble Road. He went on to say that the property was subdivided and approved by the Planning Board in roughly 2003/2004 with 16 lots created in a R-10 zone. The infrastructure was also built as part of the approval and that this current application does not change any of this infrastructure. Since that time the property has been rezoned to an R-5 zone and that with this application six of the existing lots are being divided into nine lots with a net gain of three lots. These newly created lots will be served by the existing roadway, drainage structures, etc. with no change to the infrastructure, and they are all conforming in terms of the ordinance, lot size, setbacks etc.

Mr. Malman stated that two witnesses will testify – Ms. Candace Davis of Yannaconne, Villa, Aldrich, LLC as the engineer representing the applicant, and Mr. Dave Kruger as the environmental consultant representing the applicant. He stated that an attorney representing the objectors retained an expert engineer and that any cross examination will be held for the next meeting.

Mr. Brewer swore in Ms. Davis and Mr. Kruger.

Mr. Malman stated for the record that supplemental information will be provided with regards to the reviews submitted by two of the professionals - Mr. Keenan (engineer with French & Parrello, Assoc.) and Mr. Messaros of Princeton Hydro (environmental consultant). This will be submitted before the next meeting.

Ms. Candace Davis made an appearance as the engineer on behalf of the applicant. As a voir dire, Ms. Davis stated that she has a Bachelor's engineering degree from Rutgers University and a Master's degree in civil engineer from Rutgers University as well. She holds a current New Jersey professional engineer's license, which is in good standing and that she has testified in front of this Board as well as other Boards in Morris County, Hunderton County and Somerset County. She stated that she is employed by Yannaconne, Villa, Aldrich, LLC and confirmed that she or someone under her supervision prepared the plans on file with the Board. There were no questions from any of the Board members or public regarding Ms. Davis' qualifications, and she was accepted by the Board as an expert witness for the applicant.

Ms. Davis began by displaying her first exhibit marked Exhibit A1 with today's date of October 19, 2022 and stated that this exhibit is a current arial photograph of the general area within Mendham Township where the project is located. It shows the existing 16 lots as part of the subdivision from 2003 and outlined with a blue marker is the outside of the previous subdivision approved by the Planning Board in 2003/2004. One lot is currently occupied by the current owner of the property, and two lots developed or being developed. There are six lots being addressed as part of the application, and she displayed her next exhibit marked Exhibit A2 with today's date of October 19, 2022. Ms. Davis explained that this exhibit represents a similar arial photograph; however, it isolates the current proposed subdivision and that the current lots in place are Lots 42.06, 42.07, 42.08, 42.12, 42.13, 42.16 with a small Lot 2, which is located in the town of Bernardsville. She confirmed that the lots are more than 10 acres in size and all have access to the existing road network. She displayed her next exhibit marked Exhibit A3 (previously submitted Sheet 2 of 15 of the subdivision plans) with today's date, which presents the previously approved entire subdivision with the lots that were perfected, and this is outlined in orange color. The shaded gray lots on the plan are the lots that are not being affected by the application, and plain white lots are the lots that are being affected, which are lots on the northern tract and lots on the southern tract of the site.

Ms. Davis went on to say that at the time of the previous subdivision three cisterns were installed, and she pointed out on the plan the location of these cisterns as required by the Mendham Township's ordinance requirements. She also confirmed that the roads are fully installed and operational and that there was also an allowance for stormwater management in the previous subdivision. The stormwater management that was approved currently includes three underground stormwater systems as well as one above ground system.

Ms. Davis displayed the next exhibit marked A4 with today's date (previously submitted Sheet 5 of 15 of the subdivision plans) with the current project lots affected outlined in orange color along with the lot lines in red for the subdivision both in the northern tract and southern tract. In the northern tract there are three existing lots that will be subdivided into four lots, and the southern

tract has three existing lots that will be subdivided into five lots. The lots in the southern tract comply fully with the bulk requirements for the R-5 single-family residential zone with regards to size, frontage, shape, buildable area and setback. Lot C-4 and C-5 on the plans have access onto Exmoor Drive and C-3 is considered a corner lot (corner of Exmoor Drive and Sutton Place). C-2 has access onto Sutton Place with C-1 having access onto Sutton Place through the cul-de-sac. This C-1 lot includes a portion of Bernardsville as it did with the prior subdivision. In the northern tract, all the lots shall access Exmoor Drive with one single lot that has frontage along Corey Lane and considered a thru lot for the subdivision; however, this access is proposed onto Exmoor Drive and not Corey Lane. Ms. Davis clarified that the existing infrastructure is not changing – road network, cisterns etc. with no roadway improvements proposed. The application is specifically requesting the Board's consideration for subdivision of residential lots that are currently existing under the R-5 zone.

Ms. Davis referred to her next display marked Exhibit A5 with today's date (Sheet 3 of 15 of the subdivision plans) and shows the southern tract of the subdivision being proposed which she outlined in blue. This exhibit presents the environmental constraints that are inherent with the existing land. The lots have some measure of steep slope categories according to Mendham Township's steep slope ordinance. It also demonstrates the type of vegetation that covers this particular portion of the subdivision, which she described.

Ms. Davis referred to her next display marked Exhibit A6 (Sheet 4 of 15 of the subdivision plans), which shows the northern tract. Again, there are three existing lots with the proposal to subdivide them into four lots. She went on to say that there is a tributary that runs along the edge of the property line as an existing condition, and as a result of this stream, there are wetlands that are adjacent to the stream, which triggers DEP constraints and a 300-foot riparian buffer zone as well as a 150-foot buffer zone from the freshwater wetlands. A submission was made to the DEP for an updated verification of both wetland lines for the buffers as well as the flood hazard limits and the riparian zone. An LOI verification was submitted to DEP with the prior subdivision, and this was issued. A wetland conservation easement was imposed based on the LOI and encompasses the wetlands and the 150-buffer at that time. This was deed recorded with these lots. Ms. Davis depicted in green the existing conservation easement on the existing lots on the plan and stated that it is approximately 600 feet from frontage of the roadway to the conservation easement. There are no NJDEP regulated areas within the 600 feet. Ms. Davis confirmed that there are steep slope areas per the Mendham Township steep slope ordinance and that they are demonstrated on the plan. Also identified on the plan is the vegetation coverage for these particular lots in the freshwater wetland areas and as well as in the front areas of the lots. Ms. Davis confirmed that no DEP permits will be required for the houses that will be constructed on these proposed lots.

Ms. Davis referred to her next display marked Exhibit A7 (Sheet 6 of 15 of the subdivision plans) with today's date, which shows the southern tract of the property where the three lots are proposed to be subdivided into five lots. She went on to say that this demonstrates a typical type of development for each lot - driveway access, septic system and a stormwater management control feature, which is a typical bio-retention basin. Each lot can support a single-family residential home with these associated features. Soil logs were performed on site to demonstrate the compliance with the requirements of the stormwater management rules as well as compliance with the Board of Health requirements for a septic system.

Ms. Davis stated that Mendham Township requires that a Lot Grading Plan must be submitted to engineering in order to construct a single-family dwelling along with permits and architectural plans to the Construction Department. The Tree Committee must also review the plans, and the Mendham Township ordinance has specific requirements as part of the tree removal permit. A

septic system design must also be submitted to the Health Department for approval, which is required by Mendham Township ordinance. Ms. Davis confirmed that there is no steep slope disturbance in excess of what the ordinance allows and that a variance would be required if there was excessive steep slope disturbance. She stated that each of the lots proposed comply fully with the Mendham Township steep slope ordinance and that a Lot Development Plan is feasible for each lot. If something does not comply with the ordinance, then the applicant would need to come back to the Board for a variance or modify the plan to comply with the ordinance. Ms. Davis went on to describe the areas outlined in blue showing the previous limits of disturbance for the original three lots that were approved previously.

Ms. Davis referred to her next display marked Exhibit A8 (Sheet 7 of 15) with today's date, which shows the northern tract of the property whereby three lots are being proposed to be subdivided into four lots. It demonstrates a typical grading scheme for these lots and that all four lots will have access to Exmoor Drive. Each lot can support a single-family residential home with the associated features mentioned earlier. She went on to point out that the two areas outlined in blue indicate the limits of disturbance with the previous subdivision in 2003 and that the limit of disturbance will be fairly similar with this application to what was previously presented in 2003 (0.16 acres greater in land disturbance than the previous subdivision scheme). However, at that time no stormwater management features were proposed as part of that application. In this case, each individual lot will control their own stormwater management runoff with a bio-retention basin and that these basins create a large disturbance within the lot area; however, the benefits outweigh the detriments in this case because the stormwater management rules are in compliance. The stormwater portion of each area is about 0.3 – 0.4 acres of additional disturbance and that this is the case with the southerly tract as well. Each individual lot has been designed and analyzed to comply with the stormwater management rules and part of the design accommodates each lot individually. With the previous subdivision in 2003, the stormwater analysis accommodated the full native site and not each individual lot. She reiterated that each individual homeowner will be responsible for their own stormwater management measures as well as following the Operations Management Manual, which is prepared by a design engineer for each individual lot. The design engineer will also design the stormwater management system for an individual lot. This is reviewed and approved by the Township engineer and that this is deed recorded with each lot at the time of construction. The manual identifies the maintenance required specifically for each designed system. She went on to say that there is specific language in an Operations Management Manual outlining required inspections by Mendham Township; however, the intent of the manual is to offer guidance to the individual homeowner for overall maintenance of the system. There is also a requirement to submit reports to the Township.

Ms. Davis referred to her next display marked Exhibit A9 (Sheet 8 of 15) with today's date, which shows the steep slopes on the southern portion of the tract. This exhibit demonstrates the slope analysis from 0 – greater than 25%. Each of the individual lots comply with the Mendham Township steep slope ordinance.

Ms. Davis referred to her next display marked Exhibit A10 (Sheet 9 of 15) with today's date, which shows the steep slopes on the northern portion of the tract. Again, each of the individual lots comply with the Mendham Township steep slope ordinance.

Mr. Malman stated that for the record additional information will be provided at the next meeting with regards to the Princeton Hydro report that was submitted. He then addressed the report from H2M (the Planner) dated October 11, 2022 and referred to Page 6 of the report with six comments listed. Mr. Malman addressed Mr. Cancilla's comment number 6 on this list – the existing wetlands conservation easement and that this may change depending upon what the deed indicates. When confirmation is received from DEP with regards to the transition area limits, the

existing conservation easement will be updated to accommodate this line. If there was a slight change in the lines, it would not affect this project in any way since the lines are more than 600 feet from the road. Ms. Davis stated that all of the Lot Development schemes have been presented so that they are beyond any NJDEP regulated areas. Mr. Cancilla confirmed that his comments have been addressed in his report.

Mr. Malman next addressed Mr. Keenan's engineering report dated October 17, 2022. He stated that further information will be provided before the next meeting to address Mr. Keenan's comments in the report.

Ms. Davis confirmed that the conservation easement is shown on the plans and is demonstrated on each sheet. An easement is only in the northern tract and that there are no conservation easement areas on the southern tract. She also confirmed that the existing detention basins located on the road currently were designed as an overall regional measure to handle roads and to compensate for Lot Development schemes. The intention for the previous subdivision was to incorporate dry wells to accommodate all the impervious coverage, which was the anticipated measure for each individual lot as well as the stormwater basins that were installed. The proposed scheme for this application does not include dry wells, although this is an option under the stormwater management regulations. She confirmed for Mr. Keenan that the development of any of the individual lots will require its own stormwater management in full conformance with the stormwater regulations.

Chairman Giordano deferred to the Board members for questions for Ms. Davis. Ms. Neibart inquired about the stormwater management regulations and whether Ms. Davis was referring to the 2021 Stormwater Management regulations, which are the most current rules. Ms. Davis confirmed this. Ms. Davis also explained the various steep slope categories for Ms. Neibart as well and referred to Exhibit A10, which indicates these steep slope categories. She stated that all of the lots comply with the Steep Slope ordinance. Ms. Neibart inquired as to when DEP will be submitting their analysis, and Mr. Malman stated that Mr. Kruger, the next witness, has submitted that application to the DEP and will address this.

Ms. DeMeo inquired about the location of detention basins, and Ms. Davis pointed out these basins on the plan that support the current lot schemes on the site – above ground basin that exists and preserved as an easement at the end of Exmoor Drive, an underground system at the corner of the intersection of Sutton Place and Exmoor Drive, an existing underground detention system along Hardscrabble Road and an underground detention system at the end of Sutton Place. There are easements since 2004 that protect each of these basins with the limitations presented on the filed maps. The cisterns are underground suppression tanks that hold water for fire suppression as required as a condition of the previous subdivision. She pointed out the locations of these cisterns. Mr. Malman confirmed for Ms. DeMeo that as part of the original subdivision Developer's Agreement that the road will be dedicated to the Township and become a public road once the construction is completed but that they are presently private. He further stated that he believes he has seen correspondence that the roads are basically done except for the final top coat, which will then be done to standard and then dedicated to the Township. There is also flushed-Belgium-block curbing on the site.

Mr. Maglione inquired about the size of the single-family dwellings that are being projected. Ms. Davis responded that the houses are projected as a typical rectangular box with an approximate 6,000-square foot footprint. However, this depends upon the individual lot owner. Ms. Davis explained to Mr. Maglione that there is an opportunity to use any of the allowed BMP's (Best Management Practices) dictated by the Stormwater Management rules. She went on to say that the scheme presented is with bio-retention basins; however, dry wells are an opportunity as well

as other options stated in the manual. Ms. Davis stated that with a bio-retention basin there is a requirement of an inspection for maintenance as set forth in the manual and that there is a requirement during the course of a year to inspect the different features of the bio-retention basin. It must also be verified with an inspection throughout a year to ensure that the basins are draining properly with no standing water within a certain number of hours. Bio-retention basins are typically vegetated within the basin area and that the homeowner is responsible to oversee its maintenance. Ms. Davis also went on to say that there are reporting requirements for inspections. There was further discussion regarding the maintenance of these basins with regards to the stormwater management rules.

Ms. Davis stated that the only lots that are subjected to any kind of DEP consideration are in the northern portion of the tract and that there is no proposed disturbance with the DEP regulated areas. Therefore, there is no need for any DEP permits for the entire subdivision; however, there are requirements for NJDEP stormwater management, which is required for all developments in New Jersey. It is required by a design engineer to adhere to the regulations that are dictated by the stormwater management rules.

Ms. DeMeo inquired as to whether the conservation easements along the northern tract are currently marked with conservation easement markers. Mr. Malman responded that he will look into this further and would suggest that when the revised DEP LOI is received to confirm that the line is correct that this can be marked at that point.

Chairman Giordano inquired as to the water supply for the individual homes. Ms. Davis responded that each individual lot has been presented with an individual well, which will serve each home. She confirmed that there is no public water in the vicinity. Chairman Giordano also inquired as to whether the buffers from a stream have changed significantly since 2003. Ms. Davis responded that there is now a riparian zone, which was implemented by DEP since that time, and she referred to Exhibit A-6 and demonstrated the 300-foot riparian buffer from the stream. There is not much variation between the two limits of disturbance - that being the 150-wetland buffer and the 300-foot riparian buffer.

Chairman Giordano raised the issue of the maintenance of the bio-retention basin by the homeowner and expressed his concerns with regards to the homeowner guaranteeing to maintain the basin. He inquired as to whether the Township has any rights to put a lien on the property with respect to costs incurred to clean up any issues due to homeowner neglect. Mr. Malman responded that the Township engineer has the right to inspect if the homeowner is not properly maintaining the basin and that the Township can repair the problem with the right to charge the homeowner for the repair. A lien can always be considered as well as a mechanism to address the cost of repair but that typically homeowners hire an agent to inspect and maintain the basins. There was some further discussion with regards to the preferred use and positive features of a bio-retention basins (as presented by the applicant) as opposed to other types of stormwater management design features allowed by the homeowner within the regulations. It was clarified that the bio-retention basin is only a recommendation and not a requirement. Mr. Keenan opined that it is a good idea to give the individual property owner's engineer flexibility as to the type of stormwater system they wish to implement according to the needs of the homeowner.

Ms. DeMeo inquired about tree removal on any of the proposed subdivision lots, and Mr. Malman stated that he will investigate this.

Mr. Malman confirmed that there is Counsel for an objector, who was present but that he will conduct a cross examination at the next meeting.

Mr. John Inglesino from the law firm of Inglesino & Webster located in Parsippany, NJ made an appearance and stated that he is representing Mendham Alliance Conservation Preservation Association. He went on to say that he has been retained to represent this Alliance and that an engineer and environmental consultant have also been retained. He stated that he reserves the right to cross examine at the next meeting and that only he can cross-examine as the attorney for the Alliance.

Chairman Giordano entertained a motion to open the meeting to the public for any questions that the public may have with regards to Ms. Davis' testimony only. A motion was made, and it was seconded. All agreed.

Mr. George Koenig of 13 North Gate Road approached the microphone. Mr. Koenig inquired about the average size of the nine new lots. Ms. Davis responded that the lots range from 5.3 acres to 9 acres, which is fully compliant with the lot size. She confirmed that there were three installed cisterns for fire suppression and that based on the Mendham Township ordinance, the location for the cisterns as well as gallonage for each cistern was approved the Fire Marshall. Ms. Davis went on to say that the Fire Marshall has submitted a review with regards to the fire cisterns as well as the Brookside Fire Chief for consideration of the application. Chairman Giordano stated that the Fire Chief commented in his transmittal review that the existing cisterns must be within required distances and fully operational at the time of construction. Chairman Giordano also stated that the Fire Marshall commented in his transmittal review that if no mains are approved, then the proper cistern should be installed. Ms. Davis stated that the ordinance states that the cistern must be at least 2,000 linear feet from a property and that all the cisterns are about 1,000 feet from the most outbound lot limits. She went on to say that the cisterns are in the appropriate location to accommodate the new subdivision.

Ms. Amalia Duarte of 22 Brockden Drive approached the microphone and inquired about the total length of the roadway that the town will inherit if the project is approved. Ms. Davis stated that the roadway is already installed and that there are two roadways. She explained that Exmoor Drive is the main access road for the tracts under consideration with Sutton Place running from Exmoor Drive. Sutton Place is approximately 750 linear feet and Exmoor Drive is approximately 2,800 linear feet. There are no proposed improvements to the road at this time, which is in place along with all of the stormwater management features that were approved with the original subdivision. The focus of this current project is the proposed subdivision of existing lots and that this application is regarding lot line adjustments. Ms. Duarte inquired as to the amount of catch basins that the town will have to eventually maintain, and Ms. Davis responded that she would need to see if there are drainage inlets along each road and where they are located. Ms. Davis explained that the approximate size stated for the homes is 6,000 square feet with a typical rectangular footprint that was presented for a typical lot development scheme. There is a maximum floor area permitted for each lot, which depends on the size of the lot, and she explained the FAR standards for Mendham Township.

Mr. Martin Slayne of 15 Indian Hollow Road approached the microphone and stated that he is Chairman of the Environmental Commission. He stated that additional comments were sent from the Environmental Commission, and Chairman Giordano reiterated that questions must be relevant to Ms. Davis' testimony for cross examination purposes only.

Ms. Kathy Redling approached the microphone and stated that she lives in Bernardsville. She expressed her concerns regarding the cisterns on the site – number of cisterns, capacity of each cistern, and the maximum draw. Ms. Davis clarified that the cisterns are underground tanks and filled with water for fire suppression purposes and that there is no necessary draw from the aqua for the tanks. Ms. Redling inquired as to whether the cisterns were filled by well water or by tanks,

and Ms. Davis stated that she will look into this further. Ms. Davis also clarified that she has demonstrated a typical well for each property and has presented a typical rectangle for home sites that can vary in size depending on the individual homeowner's preferences. The impervious coverage for each individual lot would need to be determined and that the .16 acres is an increase in lot disturbance and not related to impervious coverage.

Ms. Redling also inquired about the stormwater on the individual lots, and Ms. Davis confirmed that the stormwater must include green infrastructure. Ms. Redling then inquired about the septic, and Ms. Davis responded that the septic system is designed according to bedroom count. She presented a four to five-bedroom system design, which is a variable related to the individual lot homeowner along with a future submittal to the Health Department with regards to septic design. There was some further discussion regarding the septic systems and the soil log data on the proposed application.

Chairman Giordano entertained a motion to close the public portion of the meeting. A motion was made, and it was seconded. All agreed.

Mr. Maglione raised the issue of the roadway and whether the roadway would meet RSIS standards as a result of the proposed subdivision. Mr. Malman stated that he will follow-up with this at the next meeting.

Mr. Malman announced that the application will be carried to the next meeting which will be held on Tuesday, November 29, 2022 at 7:00 at the Mendham Township Middle School on 16 Washington Valley Road in the All-Purpose room. Ms. Foley will notice the papers.

Chairman Giordano opened the meeting to the public. A motion was made, and it was seconded. All agreed. Seeing no one from public, Chairman Giordano made a motion to close the meeting to the public. A motion was made, and it was seconded. All agreed.

Chairman Giordano made a motion to adjourn the meeting. A motion was made, and it was seconded. All agreed.

The meeting adjourned at 8:55 pm.

Respectively Submitted,

Beth Foley
Planning Board Secretary