

**MINUTES OF THE TOWNSHIP OF MENDHAM PLANNING BOARD  
REGULAR MEETING HELD DECEMBER 21, 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, Mr. D'Emidio, Ms. DeMeo, Mr. Johnson, Mr. Mayer,  
Mr. Maglione, Chairman Giordano

ABSENT: Mr. Perri

Others present: Mr. Andrew M. Brewer, Mr. Dennis Keenan, Ms. San Chavan, Mr. Roy  
Messaro

**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.

A motion was made to approve the minutes to the October 19, 2022 meeting, and it was seconded. All agreed. Mr. D'Emidio and Mr. Mayer abstained.

**APPLICATION – PB 22-04 – cont'd**

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. Malman of Day Pitney made an appearance on behalf of the applicant. He stated that this is the third meeting of the hearing for the application and that the witnesses for the applicant have concluded their testimony at this point. He went on to say that the witnesses will be available for cross examination from the objectors' attorney and/or public. Mr. Malman stated that since the last meeting, DEP approval was received, and it was confirmed that Ms. Foley did forward this approval to the Board. This is the Flood Hazard area verification approval dated December 13, 2022, which approves the flood hazard line on the plans and the riparian buffer lines. The LOI is still pending, which will verify the wetlands line.

Mr. John Inglesino of Inglesino & Webster located in Parsippany made an appearance on behalf of the Mendham Alliance for Preservation and Conservation and objector to this application. He went on to say that he hopes the Board is inclined to support the Chairman's strong opinion for a condition to impose tree clearing restrictions for the Indiana bat during the period from April 1<sup>st</sup> through November 15<sup>th</sup>. Mr. Inglesino stated that the applicant deferred to their request to impose an additional two conditions of any approval:

1. No tree cutting within 25 feet of a side yard.
2. No tree cutting within 50 feet of Exmoor Drive with the exception of creating a driveway.

Mr. Inglesino went on to request a further condition whereby any tree removal permit application be forwarded to the Tree Committee for review.

Mr. Inglesino stated that he has three witnesses – Mr. Eric Keller of Boehman Consulting, Mr. Harry Strano, who is an expert in habitat assessment, and Mr. Frank Zammataro, who is a co-founder and spokesperson for Mendham Alliance for Preservation and Conservation.

Mr. Malman confirmed that the conditions stated above were agreed upon by the applicant along with the limitations on tree removal because of the bats. However, he stated that he does not agree to imposing an easement since the ordinance speaks for itself on its specifications. Mr. Inglesino responded that he is asking for this as a condition since ordinances can change and opined that this condition is appropriate. Mr. Brewer opined that if the applicant agrees to a condition imposed by the Board at the request of the objector, then there would be no issues; however, if this is not the case, imposing a condition that the Governing Body might change would not be a condition that the Board could impose and legally defend since the Board has limited ability to impose conditions. There was some further discussion regarding imposing conditions, and Chairman Giordano stated that the function of the ordinance already satisfies limitations without an easement along with the fact that the Planning Board is not allowed to change ordinances. Also, Mr. Brewer has advised the Board that the ordinance is sufficient and to impose the condition is redundant.

Mr. Brewer swore in the three witnesses for the objector – Mr. Frank Zammataro, Mr. Harry Strano, and Mr. Erick Keller.

Mr. Eric Keller made an appearance as an expert witness for the objector and stated that he is an employee of the firm Boehman Consulting Group in Cedar Knolls, New Jersey. As a voir dire, he stated that he is a licensed professional civil engineer and Planner in the State of New Jersey but will be presenting before this Board in the capacity of engineer. Mr. Keller went on to say that he's been licensed for 35 years and has appeared before numerous Boards throughout New Jersey, New York, & Pennsylvania; however, he has not testified before this Board in Mendham Township in the past. He stated that he attended Rensselaer Polytech Institute followed by University of Maryland for a Master's program and that he has been accepted as an expert witness by at least over 200 Boards across the State of New Jersey. There were no further questions from any of the Board members or public regarding Mr. Keller's qualifications, and he was accepted by the Board as an expert witness for the applicant.

Mr. Keller confirmed that he has had an opportunity to review the application and submissions that were made by the applicant in connection with this application. He presented his first exhibit marked as Exhibit O-1 Lawrence Farm Estates – Site Aerial map from October 6, 2022 and prepared by his firm under his supervision and dated December 21, 2022. Mr. Keller stated that the white line is the outbounds of the entire subdivision as shown on the final plat and that the lots which are not color coded - 42.06, 42.07, 42.08, 42.12, 42.13, 42.16 – are the subject of this application. The ones that have a yellow tone to them are other lots owned by the same entity as the six lots that are part of this application. The ones in a pink tone are lots that are owned by other entities.

Mr. Keller went on to say that the testimony from the applicant's engineer indicates that while the proposed lots are in conformance with the R-5 zoning as well as the bulk standards, it is a concern

that they do not address any future individual lot development, whereby it would be impossible to avoid generating future variances by future homeowners. Further, Mr. Keller opined that this re-subdivision of these six lots into nine lots does not comply with the goals and intent of the Township Land Development ordinance, which contains other criteria and regulations that must be considered when approving a subdivision. He stated that the ordinances are structured as such that there is a zoning component and bulk requirements but that there are other factors as well, and he referred to Chapter 16 – the Subdivision and Site Plan review section of the ordinance, which he read. He went on to say that he is of the opinion that this subdivision does not meet the purposes of this section of the ordinance, whereby it will not promote the goals of conservation and protection set forth in the Township's Land Development ordinance. Mr. Keller stated that the plans presented by the applicant's engineer, Yannaccone, present a typical home; however, he opined that he does not agree with the applicant's engineer that a home can be built on a lot within its parameters and whereby variances would not be required.

Mr. Keller referred to Exhibit O-1 and stated that he is focusing on the three lots on the north side of Exmoor Drive that are very wooded with a Category 1 stream running through the back. It also has exceptional resource value wetlands, which have a 150-foot buffer. The C-1 waterway has a 300-foot buffer. He stated that these lots are proposed to be re-subdivided into four lots and that the subdivision as approved with these three lots had about 2.65 acres of wooded area removal. If the property was divided into four lots, the tree removal would increase by .39 acres, which is 17,000 square feet, and he discussed this in context with an additional home and bio-retention basin being added on the additional lot being proposed. Mr. Keller went on to say that the applicant crafted the typical houses and placement of septic and bio-retention basins in the proposed subdivision to avoid any variances. This was done by showing a 5,000-square foot box for a house, which is typical; however, he opined that what is concerning is that the plan indicates an outdoor space of only 300 square feet, which is not reasonable. He continued to say that two of the lots on the north side have septic systems that are immediately behind the house, which will constrain the ability for a pool, patio, deck etc., and he opined that because of the way the application is crafted that variances will be required as a result of greater disturbance by a future homeowner. Those types of variance applications will then need to go the Board of Adjustment and not the Planning Board since that is how the Land Use laws are designed.

Mr. Keller presented his next exhibit marked as Exhibit O2 with today's date of December 21, 2022, and he distributed to each of the Board members 11 x 17 copies of Exhibit O-2. He stated that it is Sheet 9 of 15 of the Yannaccone plans, which is the Slope Analysis plan and colorized to show the limits of the disturbance that was shown with the steep slope areas as set forth in the ordinance. The blue is the 10-15% steep slope area, the pink is the 15-25% steep slope area and the rust color is the 25% & over steep slope area. Mr. Keller went on to say that he outlined in red the disturbance limits as shown on the plan and that the blue line outlined is the DEP regulated areas – either a C-1 300-foot riparian zone or the 150-foot wetland transition area. He pointed out that the rear portion of these lots are constrained by DEP regulations and that the four lots in addition to being almost 100 percent wooded also have an extensive steep slope area immediately outside the proposed limits of disturbance. The bio-retention basins shown on the plan are based upon the improvements shown, and he discussed the stormwater impact on these lots with their bio-retention basins since each one of these lots is considered a major development under the stormwater regulations, which means the applicant must comply with the local ordinance and state regulations. The DEP introduced rules to change the criteria by which stormwater must be calculated and that to accommodate these changes, the size of the bio-retention basins will need to be larger, which would create future variances on these lots along with the further clearing of trees in the wooded areas. Mr. Keller noted that the Land Use ordinance permits the Planning Board, as a condition of approval, to impose conservation easements on steep slope areas as well as wetland and flood hazard areas according to Chapter

16-10.8f – Conservation easements. The MAPC is requesting these conservation easements to protect this area since wooded area removal, especially in an area that is upstream of a C-1 waterway with an exceptional resource value wetland, would impact wildlife, vegetation, runoff and increased erosion potential since these homes are being built around steep slopes. It also changes the character of the area and decreases groundwater recharge as well as other environmental factors. Also, in Chapter 16-5.9 it states that tree removal shall be subject to review and recommendation by the Tree Preservation and Landscape Committee pursuant to Chapter 23- 5.2 of the Township Tree Preservation Ordinance. He went on to say that he has not seen any review or recommendation from the Tree Preservation Committee to the Planning Board with regards to tree removal. Mr. Keller opined, therefore, that with the type of lots being constructed and the associated impacts on stormwater that there would be much more disturbance on these lots than what has been indicated.

Mr. Keller went on to state that because bio-retentions basins of any kind are being proposed around these slopes, it is possible that a Class IV dam may be formed on the downstream side of these bio-retention basins. He went on to say that if there is any failure of this dam and/or of the bio-retention basin itself, it will flow right into the C-1 waterway, which is a concern.

Mr. Keller sighted Chapter 16-10.8 of the Land Use Ordinance, which speaks to the protection of critical areas and states that “all subdivisions shall be designed so that critical areas - disturbance of which could result in flooding, erosion, loss of valuable vegetation, impairment of water quality or other substantial harm to the environmental - shall be left undisturbed.” He opined that this portion of the subdivision does not meet the requirements of the ordinance, and he referred back to Exhibit O-1. He stated that the entity who owns the six lots also owns some of the other lots that are in yellow on the exhibit and that the Township ordinance encourages lot size averaging. He opined that this applicant could achieve the same yield (3 more lots) while preserving the areas that are a lot more sensitive, which extend up towards Jockey Hollow and Lewis Morris Parks and are part of a much more forested area. There are other lots available that are more open and less constrained and that the MAPC is looking for protection of the C-1 waterways, wetland areas and steep slopes. The lots on the south side of Exmoor do have some woods but they are not critical wooded areas or part of a larger wooded area.

Mr. Inglesino opened up to the Board any questions they may have for Mr. Keller. Mr. Mayer inquired whether the stormwater plan can handle what the plan indicates for the proposed subdivision. Mr. Keller responded that it is appropriately sized for the improvements that are shown on this plan, but he opined that this is not reasonable or likely to occur on lots like these being proposed. There was some further discussion regarding the potential for Class IV dams as a result of the bio-retention basins in the more environmentally sensitive lots, and Mr. Keller opined that the basins will need to be bigger because the impervious coverage will be increased. This would increase the likelihood for a Class IV dam. Mr. Keller went on to discuss and opine that the lots do not need to be 5-acre lots and that some of the lots can be designated as 3-acre lots under Township regulations, which would then significantly reduce the impacts in the environmentally sensitive areas. Mr. Orlins stated that steep slopes are not uncommon in Mendham Township, and a conversation ensued as to why it is unreasonable to have steep slope restrictions with this application. Mr. Orlins referred to similar lots on Cobblefield Drive, whereby development on those lots has not been a problem. Mr. Keller responded that the lots on Cobblefield Drive do not have bio-retention basins and that the lots did not have to meet the same standards that must be met today.

Mr. D’Emidio opined that it seems that Mr. Keller is arguing against bio-retention basins, and Mr. Keller clarified that this is not the case. He went on to say that the DEP encourages bio-retention basins under today’s green infrastructure stormwater rules since they are more natural, can

handle water quality, water quantity and ground water recharge. However, the size of the bio-retention basins is based on the increase in runoff from the site and that when trees are removed for lawn space or impervious coverage, then the basins need to be larger in size to deal with the increase in runoff in order to get the water from the disturbed area into the basins. Mr. D'Emidio stated that the testimony by the applicant's engineer indicated that bio-retention basins are only one potential method and that the Township engineer reviews a lot development plan, whereby at that point the option of what method will be used would be determined. He went on to say that the water can be handled by some type of other system and not necessarily a bio-retention system.

Mr. D'Emidio inquired about the discussion with regards to lot averaging and that he does not understand the argument for 3-acre zoning since many more lots would be created beyond just the three lots under five-acre zoning. The houses may be smaller, but there would be many more lots. Mr. Keller responded that the applicant has the ability to consider lot size averaging today but chose not to do this. The MAPC is seeking to protect the more environmentally sensitive areas by developing elsewhere on lots that are flatter, do not have C-1 waterways in the back and do not have exceptional resource wetlands. The concern is in developing an area on the northern side that has steep slopes, C-1 waterways etc. that are more impacted by disturbing these areas. He discussed further installing dry wells and the impacts of that versus bio-retention basins, and Mr. D'Emidio stated that each lot will be reviewed individually for what method is best under a lot development review plan by the Township engineer. Ms. Neibart referred to Exhibit O-2 and inquired about the outlined pathway from the outlined bio-retention basins. Mr. Keller explained that this is a drain system that comes from behind the house down to the bio-retention basin. Mr. Keller also explained that there must be a means of obtaining access to the bio-retention basin so that it can be maintained and that he is unclear as to whether there is a traversable access way. Ms. Neibart stated that there seems to be a need for a vehicle accessway to the basin and that she did not see this on the original plan.

Chairman Giordano opined that Mr. Keller's testimony was esoteric and that what the applicant is presenting is not in violation of the ordinance – only that in the future there could be variances requested. He stated that variances may be requested under Mr. Keller's plan as well. Based upon this, Chairman Giordano asked Mr. Brewer to advise on the scope of the Board's responsibility when there is an application presented and meets all of the requirements of the ordinance and then an objector presents to the Board a different scenario for the application. Mr. Brewer explained that decisions made by the Governing Body cannot be overruled by the Planning Board. In this case, the Governing Body has ruled the site as an R-5 zone from an R-10 zone. He went on to say that what is being presented by the objector is that because variances may be required in the future under the R-5 zone that the Planning Board should deny the application. This is not in the Planning Board's jurisdiction to allow this under the site plan context and that the Governing Body has decided what complies. There was some further discussion and argument regarding this by Mr. Inglesino and Mr. Brewer. Chairman Giordano summarized the objector's argument that the Planning Board has the authority to take a conforming, legally binding application within the statute and modify it on the objector's behalf.

Chairman Giordano addressed Mr. Keller and stated that there are some subterranean bio-retention basins in Mendham Township. Mr. Keller clarified that underground basins that do not infiltrate are no longer permitted under DEP regulations.

Chairman Giordano clarified that the Tree Preservation Committee indicated that before any trees are removed, they will visit the site and evaluate each tree. This is not being done in advance. Mr. Keller went on to discuss what he opined as a better plan that meets the code of the Township and will not have as much impact on environmentally sensitive areas. He reiterated his previous

testimony regarding the Board's rights to impose a conservation easement as a condition of any approval on steep slopes should the Board approve this plan. This again is at the request of MAPC.

Mr. Keller confirmed that this application as presented does not have a Class IV dam; however, there is a potential for a Class IV dam for any basin sitting on steep slopes. Mr. Messaro clarified that for what is being proposed with this application, it is unlikely that a Class IV dam will result with a green infrastructure bio basin. There was some further discussion regarding the subject of a Class IV dam and bio-retention basins.

Chairman Giordano reiterated that each lot would be evaluated through a Lot Development plan by the Township engineer. Mr. Keenan explained the Lot Grading Application process and what is evaluated on each individual lot – slope on driveway, construction, grades, drainage patterns, stormwater implications etc. The applicant must prepare slope maps as part of this review. He went on to say that when there is an application that is fully compliant with the ordinance, then all of the requirements of the Lot Grading review must be satisfied.

Mr. Malman referred to Mr. Keller's testimony regarding his suggestion of lot averaging and whether it is his testimony that he prefers that the three lots in the northern area be preserved and that other lots be modified someplace else on the property. Mr. Keller responded that the MAPC would like to see the three existing lots be preserved and those homes be developed elsewhere within the subdivision. He discussed where and how this could be accomplished – perhaps making the lots on the south side of the proposed plan 3-acre lots instead of 5-acre lots. He confirmed for Mr. Malman that the MAPC would like to see a good portion of the 3 lots on the northern side preserved because of the environmental constraints surrounding these lots.

Chairman Giordano entertained a motion to open up the meeting to the public for any questions they may have with regards to Mr. Keller's testimony. A motion was made, and it was seconded. All agreed.

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

Mr. Inglesino called his next witness, Mr. Harry Strano, who was previously sworn in. Mr. Strano made an appearance as an expert witness in habitat assessment for the objector. As a voir dire, Mr. Strano stated that he is a Department Manager with Davy Resource Group – Threatened and Endangered species and that he has a Bachelor of Science from Rutgers University, Cook College - Natural Resource Management with a specialization in applied ecology. He went on to say that he's been with the Davy Resource Group for 25 years with experience in habitat assessments of all types and that he has done habitat assessment for the DEP. He also has been hired by the US Fish & Wildlife Service as part of the Great Swamp to do habitat assessments and estimated that he has done hundreds of habitat assessments. Mr. Strano stated that he has provided expert testimony to Planning Boards in the past regarding habitats and wildlife and has been accepted as an expert in this area of habitat assessments by these Boards. Mr. Strano went on to say that he was contacted to review the EIS and plans for this application.

Mr. Inglesino respectively requested the Board to accept Mr. Strano has a qualified expert in the area of habitat assessment based upon the qualifications that he has provided to the Board. Mr. Mayer inquired whether there is any certification required, and Mr. Strano responded that there is a wildlife certification but that this is extremely uncommon and that academics only use this for the most part. Chairman Giordano inquired as to whether Mr. Strano could be an expert witness

since no license is required in this field, and Mr. Messaro responded that he is not aware of whether a license is required. Mr. Brewer confirmed that he would suffice as an expert witness. Mr. Malman inquired as to how Mr. Strano prepared himself in order to testify, and Mr. Strano responded that he reviewed the EIS and the wildlife section in the EIS along with the application's plans. He also observed the site from the perimeter of an adjacent piece of property. There were no further questions from any of the Board members or public regarding Mr. Keller's qualifications, and he was accepted by the Board as a habitat assessment expert witness for the applicant. Mr. Strano clarified that he is basically an ecology expert for local habitats within the region of Mendham as well as northeastern United States.

Mr. Strano began by saying that the EIS acknowledges that the site does have suitable habitat for two types of bat species (Indiana bat and Northern long-eared bat) and that most of the forest within this project scope is designated as an area whereby these bats are not necessarily on the site but within the vicinity of the site. Therefore, the removal of trees can potentially impact their habitat and that even though the applicant is not required to coordinate with the US Fish and Wildlife service, it is a prudent recommendation to coordinate with them in order to determine the extent of the impact that tree removal would have on the forest. The guideline that is used for Morris County is that if more than one acre of trees is being cleared, then the service is interested in reviewing the project information with regards to the extent of forest being cleared and perhaps the tree species being cleared. If it was requested by the Planning Board that the applicant coordinate with the US Fish and Wildlife Service, then this would be an opportunity to review the application. The coordination would ensure that if the US Fish & Wildlife Service recommendations are followed that this would offer protections for the bats, and Mr. Strano explained how this coordination can be accomplished. He went on to discuss some of the other potential environmental wildlife impacts that may be affected, which may include wood turtle habitat as a result of any water or drainage changes and habitat for forest interior birds of various species.

Mr. Strano confirmed for Mr. Inglesino that the clearing of trees from April 1<sup>st</sup> through November 15<sup>th</sup> is a positive restriction. He discussed the particular bat species in this area and that the impact on these species is minimized in the winter when they are in the caves; however, during the summer months, the bats move to the trees, whereby there would be a direct impact to them if the tree clearing was allowed during this time. He opined that more should be considered with regards to this environmentally sensitive area and opined that it would be prudent to coordinate with the US Fish and Wildlife Service since they would be able to advise and provide the most detailed information as to the exact location of these sensitive areas and where the bats travel. Mr. Strano explained the process for contacting the US Fish and Wildlife Service, which is not legally required but a strong recommendation. The US Fish and Wildlife Service would make some sort of assessment and offer recommendations with regards to what further steps should be taken in order to safeguard this area. Mr. Strano discussed the characteristics of this particular site, which led him to conclude that an assessment by the US Fish and Wildlife would be appropriate. His main concern is the number of trees being cleared in this location based on what has been submitted to the Board and that significant displacement of endangered bats could occur as a result of habitat changes, even if it is outside of the clearing restriction of April 1<sup>st</sup> – November 15<sup>th</sup>. Any changes as a result could be considered a violation of the Endangered Species Act under federal law, although this may not be the case in this situation. However, the US Fish & Wildlife Service could assess what the risks would be on a site such as this. Mr. Strano added that this is a good Best Management Practice under the Endangered Species Act and would help the Board understand what the exact impact of clearing these trees has on these species.

Mr. Inglesino asked Mr. Strano whether a cluster plan, whereby the lots to be developed are in one particular area of the property as opposed to being spread out as is proposed, would be a more positive outcome in terms of the habitat preservation. Mr. Strano confirmed that the less trees removed, the less impact there would be on the habitat and that since this particular property acts as a forest border between two larger, public forested areas on either side, that this is another reason why it would be prudent to minimize the impact of tree removal in this particular ban of forest since many species use these corridors for traveling during migration. The more these corridors are protected the better for the environment and that cluster development would help with these protections.

Mr. Strano stated that the US Fish & Wildlife Service is interested in trees with a diameter of at least 3 inches with a height of about ten feet, which are the types of trees that might be used by bats. There was some further discussion regarding the displacement of bats from their environment, and Mr. Strano stated that this is why he recommends the US Fish & Wildlife assess the site. Mr. D'Emidio inquired as to how long the evaluation process would take once the US Fish & Wildlife Services becomes involved, and Mr. Strano responded that the initial review might take approximately 30 days for a response from the service; however, it could take longer if additional surveys are requested (potentially a year). He confirmed that bats can possibly return to the same tree, and Mr. Strano explained that as of January the Northern long-eared bat will be considered an endangered species along with the Indiana bats, which are already considered endangered. Mr. Strano confirmed that there is no fee for the assessment by the service; however, there would be a cost to the developer to hire its professionals to actually conduct the field work for the assessment. A tree inventory can be quite costly but that the cost would depend on the scope of the work.

Mr. Strano clarified for Ms. DeMeo that if there is a clearing of greater than one acre of trees in Morris County, the US Fish & Wildlife Service is interested in obtaining information with regards to the project. This would be voluntary or if the Planning Board requested that this should be a condition of approval. Again, Mr. Strano stated that this is considered a Best Management Practice by contacting the service and having them conduct an assessment.

Mr. Messaro stated that it would have been more beneficial to Mr. Strano's testimony if a tree survey was done for the location of the hickory trees essential to the bats. Mr. Strano confirmed it would be speculation as to the location of these hickory trees without a tree survey.

Mr. Malman stated that he has no questions for Mr. Strano.

Chairman Giordano entertained a motion to open the meeting to the public for any questions they have with regards to Mr. Strano's testimony. A motion was made, and it was seconded. All agree.

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

Mr. Inglesino called his next witness, Mr. Frank Zammataro of 41 Corey Lane (Black Horse Farm). As a voir dire, Mr. Zammataro stated that he is one of the co-founders of the Mendham Alliance for Preservation & Conservation, which was formed earlier this year in response to the re-zoning of Lawrence Farmland, LLC from an R-10 zone to an R-5 zone by the Township Committee in 2021. Mr. Zammataro stated that they have lived in Mendham since 2016, and Mr. Inglesino clarified that Mr. Zammataro is not present as an expert witness but in the capacity of spokesperson for the MAPC.



Mr. Inglesino asked Mr. Zammataro to describe to the Board the impetus behind the formation of the MAPC along with their objectives and concerns. Mr. Zammataro explained that he and fellow residents were concerned regarding the zoning change by the Township Committee from R-10 zone to R-5 zone at the Lawrence Farmland site. A delay on the approval of this change was requested because of the environmental impact that the zone change would have on the C-1 water ways and the habitat on this site. However, there was no opportunity to delay this decision since the Committee moved ahead anyway and approved the zone change. As a result, he and his fellow residents formed and organized the MAPC this past year and that they were told by the Township Committee that many of these issues would be handled at the Planning Board level. The Planning Board would help balance the environment and development plan being formulated. Mr. Zammataro stated that this is the reason why the MAPC is present during the hearings with this application.

Mr. Zammataro presented an exhibit marked as Exhibit O-3 with today's date, and he stated that the photos on the exhibit are images of the Lawrence Farmland property. The first image is a GIP map from NJDEP, which shows Lawrence Farmland as a documented corridor for both endangered and threatened species. On another image, he pointed out the various species all documented in this corridor and impacted by any major tree removal and habitat disturbance. He included other images that do not have to do with the current application but of other lots whereby tree removal is being considered. Mr. Zammataro confirmed for Mr. Inglesino that he was very displeased that the ordinance creating the zoning change was approved quickly and without appropriate input from concerned residents who are interested in the potential environmental consequences as a result of the change. Mr. Zammataro stated that over 50 residents signed a petition, which allowed for a formal protest to delay the zone change and that this was disregarded. Since the process was not delayed, there was no time to organize and conduct an additional environmental review of the proposed zone change and to obtain experts to assist the Township Committee in exploring other opportunities in order to make a sound decision about how to approach this issue. Mr. Zammataro confirmed that the response received from the Township Committee was that his concerns with regards to the environment would be addressed at the Planning Board level and that his expectation was that when the proposed subdivision application was submitted that these concerns would be taken into account by the Planning Board. This would help guide the Planning Board in its decision-making process with regards to this application. He stated that the hope now is that there will be a balanced review of this application and that it would be a condition of approval to involve the US Fish & Wildlife Services and to also pursue the 50-foot conservation easement in order to make it as difficult as possible for any future owner to remove trees along Exmoor Drive. He confirmed for Mr. Inglesino that MAPC's interest is in the preservation of trees and habitat in environmentally sensitive areas of the property as depicted by Mr. Keller and Mr. Strano.

Mr. Zammataro went onto discuss the Tree Committee and the need for a tree enforcement officer who can assess environmental damage and act on it in an appropriate manner. He knows that this is not the purview of the Planning Board but wished to opine on the matter.

Mr. Inglesino addressed and confirmed with Mr. Zammataro the conditions that MAPC would like to see approved and implemented with the proposed subdivision application should the application be approved.

1. No tree cutting within 25 feet of the side yard, which is a codification of an existing ordinance.
2. No tree cutting within 50 feet of Exmoor Drive, which is a codification of an existing ordinance. The exception would be for creating a driveway to the construction site.

3. Support codification of the requirement that there would be a tree removal permit in accordance with the local ordinance and review by the Tree Committee. Mr. Zammataro added that it would behoove the Township to have the Tree Committee hire an expert who can assist and support any tree activity in Mendham Township.
4. Advocate for a condition of approval that the Board require a conservation easement on steep slopes and areas that would otherwise require a variance. Mr. Zammataro reiterated the other experts' testimony that the steep slopes and tree removals would enable stormwater to flow into the C-1 category water ways.
5. Advocate for a condition of approval that the application prepare a plan to the US Fish & Wildlife Services for an assessment and that the owner or future owners of the property or properties would be bound by the recommendations provided by them to ensure Best Management Practices with regard to protecting the habitat.
6. Mr. Inglesino clarified that the conservation easement would be for all areas not identified for disturbance on the submitted plans. This would preclude the subsequent owners from going to the Board of Adjustment for any variances that would be required.
7. Advocate a cluster plan or lot averaging plan as opposed to the plan that has been submitted as it relates to the conservation of trees and habitat. Mr. Inglesino stated that the ordinance encourages this but that this is not a requirement and that it would actually be creating more lots. Mr. Zammataro confirmed that he understands that more lots could be created but that the environmental concerns outweigh this.

Mr. Zammataro stated for the record that MAPC and Mr. Strano did not have the opportunity to access the property since the roads are not public roads at this point in time.

Mr. Maglione discussed the expectation of variances in the future with these lots and MAPC's view on imposing conditions to eliminate any future variances. He opined that it is not equitable for the homeowners to have these conditions imposed, whereby the homeowner would be unable to seek a variance for whatever needs they may have on their property. There was some further discussion regarding the conditions imposed and its effects on future variances by a homeowner.

Mr. Zammataro reiterated that the Planning Board has an opportunity to set some conditions to balance the development with the state of the present environment, which is very unique and different than in other parts of the Township. Mr. Inglesino added that the theme is to codify the existing ordinance with permanent restrictions.

Mr. Zammataro clarified that there are seven directors and three founding members who sit on the MAPC and that it is a non-profit organization. The organization's goal is to focus on both Township and Borough related activities that have to do with preserving the rural and historic qualities of the "Mendham's." This is their mission, and he stated that the organization has a website – [savemendham.org](http://savemendham.org). Mr. Zammataro went on to say that this a reactive project and that the MAPC would like to become proactive in the future in both the Township and the Borough.

Mr. Malman inquired whether Mr. Zammataro was present and displeased when the Township Committee decided to re-zone the property from an R-10 zone to an R-5 zone, and Mr. Zammataro explained that this was not the case but that the group was seeking a delay in the zone change by the Township Committee in order to allow for further review of the environmental impact with regards to the proposed subdivision.

Mr. Zammataro clarified for Mr. Malman that he and Mr. Strano only walked on the perimeter of the northern part of the property since they were not permitted to walk on the property.

Chairman Giordano entertained a motion to open the meeting to the public for any questions they may have with regards to Mr. Zammataro's testimony. A motion was made, and it was seconded. All agree.

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

Mr. Inglesino stated that he does not anticipate any further witnesses but that he needs to confer with his client. He stated that he will coordinate with Mr. Malman with regards to any further witnesses.

Mr. Brewer asked Mr. Inglesino to submit the requested conditions that MAPC wishes to impose to he and Mr. Malman at least ten days in advance.

Chairman Giordano announced that the application will be carried with no further notice to the next scheduled Planning Board meeting on January 18, 2023 at 7:00 pm at the Mendham Township Middle School, All Purpose Room.

Chairman Giordano entertained a motion to open the meeting to the public. A motion was made, and it was seconded. All agree.

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

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

The meeting adjourned at 10:08 pm.

Respectively Submitted,

Beth Foley  
Planning Board Secretary