

**MINUTES OF THE TOWNSHIP OF MENDHAM PLANNING BOARD
REGULAR MEETING HELD FEBRUARY 17, 2021
VIA ZOOM**

The remote meeting via zoom was called to order by Chairman Giordano at 7:30 p.m. who asked for a roll call. Upon roll call:

ROLL CALL

PRESENT: Mr. Baio, Mr. Monaghan, Mr. D’Emidio, Ms. DeMeo, Mr. Johnson, Mr. Mayer, Mr. Maglione, Chairman Giordano
ABSENT: Mr. Perri
Others present: Mr. Dennis Keenan, Ms. Susan Crawford, Mr. Ryan Conklin, Mr. Jack Szczepanski

SALUTE 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 10, 2019 and Notice was filed with the Township Clerk on January 10, 2020

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 and decorum and civility appropriate to a quasi-judicial hearing will be maintained at all time.

MINUTES

A motion was made to approve the October 20, 2020 regular meeting minutes and the January 5, 2021 Reorganization meeting, and it was seconded. All agreed.

ABSTAIN: None

STORMWATER ORDINANCE NO. 01-2021

Mr. Denis Keenan, Planning Board engineer, began by saying that the NJDEP adopted significant recent amendments to the current stormwater regulations and that all municipalities are required to update their individual ordinances to, at a minimum, comply with the recent Stormwater Rule amendments, which take effect March 2, 2021. These updates include, but are not limited to, incorporation of changes to replace the current requirement that major developments incorporate nonstructural stormwater management strategies to the “maximum extent practicable” to meet groundwater recharge standards, stormwater runoff quantity standards, and stormwater runoff standards. Mr. Keenan explained that the Stormwater regulations’ origin dates back to 2004 when NJDEP initially introduced these regulations. It is a requirement that comes with the MS-4 permitting that allows discharging of water in the state. The current regulation is triggered when there is any major development in the Township that creates over one acre of disturbance or ¼ acre of impervious coverage and that this is what has been in effect since 2004. Mr. Keenan went on to say that this is the first time that the state has required any updates to this ordinance and that the updated ordinance is very similar with what is currently required but with some significant differences. The one-acre of disturbance and ¼ acre of impervious remains as a standard trigger; however, the state has changed the way the state views this trigger. When a project is being

considered as a major development, the February 2, 2004 stormwater ordinance is triggered if there is over one acre of disturbance or over ¼ acre of new impervious. He explained (as example) that a project in 2010 with .2 acres of increase in impervious would not have been subject to the stormwater regulations back then. However, if another project is now submitted for the same site with only .1 acre of increase in impervious (in the past this did not trigger the stormwater management regulations) then the cumulative effects from 2004 would be .3 acres of increase in impervious coverage, which now triggers the new stormwater regulations.

Mr. Keenan explained some other amendments that include changes in applying the total suspended solids (TSS) removal requirement to the runoff from motor vehicle surfaces and to eliminate the TSS removal requirement as it applies to the runoff from other impervious surfaces not traveled by automobiles, such as rooftops and sidewalks. He also described another significant change which applies to green infrastructure with a requirement that this be utilized to meet these same standards. This green infrastructure program addresses low impact development and defines the water quality treatment measures permitted by the state.

Mr. Keenan explained that he made modifications to the current ordinance, which would reflect specific issues within the Township and remove those items within the NJDEP Draft model ordinance that are not applicable to the Township. It is further noted that any modifications to the ordinance would not make the regulations less stringent, only more stringent.

Mr. Keenan confirmed for Chairman Giordano that what the Planning Board is reviewing is something that is required by the State and that the Township Committee does not have “carte blanche” to make changes other than to make the ordinance more restrictive. Chairman Giordano inquired as to who monitors the cumulative amounts at a site from 2004 when a new project is introduced at that same site triggering the new stormwater regulations. Mr. Keenan confirmed that this could be a challenge to determine a cumulative amount since there would be some back tracking involved. He opined that this will be a combination of Board review, the professionals’ review and Ms. Foley’s input as far as what has been done. He stated that he would be doing his due diligence with regards to this issue with the use of ariels for a particular property.

Mr. Mayer inquired whether the modified ordinance would be reviewed by other state agencies or whether everything is handled at the Township level with our professionals, our town Planning Board approvals etc. Mr. Keenan stated that he does not foresee projects being referred back to NJDEP. Mr. Herrmann of Princeton Hydro added that if the Township is inclined to grant a waiver by the Planning Board for a BMP, then a letter notifying the county or state is required explaining the reason for granting the waiver. This is most likely the only time that a higher agency would become involved.

Mr. Mayer inquired about the definition of ‘Development’ in the ordinance and whether the new regulations will affect minor subdivision applications, which currently contain less stormwater requirements. Mr. Herrmann responded that this does not impact the definitions within the zoning regulations – this is separate and distinct from the zoning regulations. Mr. Keenan clarified that for a minor subdivision the full design stormwater regulations are not required; however, when the property becomes developed then the new regulations would be triggered. The subdivision itself does not disturb property and does not become a major development until development commences. When development begins, then the Lot Grading Permits would be triggered with stormwater management review.

Ms. Crawford, the Planning Board attorney, reiterated that the question before the Board is whether the Ordinance 01-2021 is inconsistent with the Master Plan and that this is for the Board

to determine. The second consideration before the Board is whether the Board has any recommendations for revisions to the ordinance.

Chairman Giordano sighted a correction that should be made in the ordinance that Ms. DeMeo pointed out after her review. On Page 2, Section 2 under Definitions – “County review agency” – the ordinance states agency designated by the County Board of Chosen Freeholders – as of January 1, 2021 it has been renamed as County Board of Commissioners.

Mr. Maglione inquired about the RSIS. Mr. Keenan responded that the RSIS pre dated this and that RSIS is more than residential – this is any development. He asked whether the ordinance before the Board for comment is not any more stringent than what the state is requesting. Mr. Keenan confirmed this. Ms. Crawford advised the Board that she would be somewhat reluctant to make a recommendation of more stringent requirements because of the consequences should the Township Committee not follow the Board’s recommendation, which is at their discretion to do. Again, she advised that it strictly be a review of whether the ordinance is or is not inconsistent with the Master Plan and whether the Planning Board has any recommendations for any revisions to the ordinance.

Mr. Conklin, Planner from H2M, offered the Board a little of his background since he is now replacing Mr. Jeffrey Janota of H2M. He opined that the ordinance before the Board is consistent with DEP’s model ordinance and consistent with the Master Plan. As a planning and zoning administrator, he understands the context of how these regulations are applied at the local level for lots to be developed or increases in impervious coverages over the threshold of disturbances. It is applied and managed by the Township engineer.

Mr. Conklin asked Mr. Keenan about the overall cumulative increase in impervious coverage and land disturbance and whether this is a requirement of the MS-4 permitting to address this. Mr. Keenan responded that this will be the number that would be added into the summary he provides as part of the MS-4 reporting. Mr. Conklin also added that this ordinance in concert with some of the Township’s bulk area standards would allow residents to enhance their property value while also protecting the integrity of stormwater infiltration.

Mr. Herrman added that this ordinance must be adopted by March 3rd but that the Township could certainly make changes at some future point by revisiting the Master Plan. Chairman Giordano clarified that the Township’s Master Plan is currently under active review.

Mr. Maglione asked for clarification regarding the stormwater regulations in relation to additions etc. that would be done currently to a home and whether the new stormwater regulations would be triggered and therefore subject to the additional restrictions. Mr. Keenan responded that if the house was built after 2004, it is most likely that if an addition was currently put on the house that the new stormwater regulations would be triggered and would kick the cumulative into effect. It will definitely impact small projects and otherwise insignificant projects, and residents would have to start incorporating these measures. Mr. Mayer opined that this would discourage people from improving their homes and obtaining permits and would ultimately hurt property values. Mr. Keenan discussed this further and added that there is already in place a Lot Grading Permit process in the Township and that for small projects there are significant design elements that need to be incorporated through this process in order for the average homeowner to put on a small addition. Therefore, it is very possible that despite the new stormwater regulations that the Lot Grading Permit process would require certain elements that the new stormwater regulations would require. Mr. Monaghan opined that this could make older houses more valuable since there is more flexibility in light of the fact that there were no prior improvements done and no cumulative restrictions to address.

Mr. Mayer inquired about the penalties in Section 11 of the ordinance and whether there are current penalties in effect. Mr. Keenan responded that this references Chapter XXII of the Township ordinance and that this follows suit with what the current ordinance references.

Some other minor typo errors in the proposed ordinance were indicated by the Board members.

Chairman Giordano requested a motion as follows:

The Planning Board at its public meeting on February 17, 2021 addressed Ordinance No. 01-2021 deleting Chapter 11 and creating a new Chapter 11 Stormwater Ordinance controls and finds:

1. that the said ordinance is **not inconsistent** with the Master Plan of the Township of Mendham
2. the Planning Board would recommend three modifications to the wording of the ordinance:
 - Consider adding a line space at the top of the ordinance prior to Section 1.
 - On Page 2, Section 2, the proper term is County of Board of Commissioners – not County Board of Freeholders
 - On Page 22 above paragraph 3 there is a series of letters, which appear to be a typographical error.

Ms. Crawford confirmed that the new Stormwater Ordinance does not need to be opened to the public. Mr. Monaghan clarified that it will be opened up to the public at the Township Committee meeting at its second reading.

A motion was made by Mr. D'Emidio to approve Ordinance No. 01-2021 in the form so stated above, and it was seconded by Mr. Johnson.

AYES: Mr. Baio, Mr. Monaghan, Mr. D'Emidio, Ms. DeMeo, Mr. Johnson, Mr. Mayer, Chairman Giordano

Mr. Ryan Conklin, Planner for H2M, gave an update on the Master Plan and referred to the February 4, 2021 legislative update (A-2785/S-2607) from Governor Murphy that "Requires the land use plan element of municipal Master Plan to include a climate change-related hazard vulnerability assessment." Ms. Foley forwarded this on to all of the Board members previously. Although this is a requirement for all Land Use Plan Element's to be adopted after the date of enactment, the State is still formulating the guidelines to be followed along with the timeline of those guidelines, which are critical for H2M's continued progress on finalizing Mendham Township's Land Use Element. Mr. Conklin stated that he wished to reach out to Mr. Buzak to discuss this new legislation in order to add some legal clarity and potential options. He stated that he has completed hundreds vulnerability assessments throughout the State and has much experience with this and that he is waiting to hear from NJDEP as to whether the annex for the vulnerability assessment for Mendham Township as part of the Morris County Mitigation Plan can be included in the Mendham Township Land Use Plan Element and also whether the analysis can be mimicked and included as part of the Master Plan. He also inquired to the NJDEP whether there are other set of standards beyond what the normal best management practices are for a hazard mitigation plan. Mr. Conklin went on to say that this complicates the timeline from an adoption standpoint and that he must obtain feedback from the NJDEP before he can make a solid recommendation as to the path of least resistance moving forward to getting this piece of legislation integrated into the Land Use Plan Element for Mendham Township.

Chairman Giordano asked whether an amendment to Master Plan can be inserted should the guidelines from NJDEP take a longer time to obtain. Mr. Conklin responded that he does not anticipate NJDEP saying that the inclusion of the annex will be sufficient. He went on to say that NJDEP is asking for a build-out and that this annex vulnerability assessment as part of the hazard mitigation plan is not based on a build-out. It is not based on recommended land uses but based on existing conditions. This is a key difference in what this legislation has called for and what is included as part those annexes. He anticipates that NJDEP will require that the Township apply the FEMA standards for the vulnerability assessment and a build-out based upon the Land Use recommendations in the Master Plan.

Mr. Baio inquired about the hazards that the legislation referred too and that much of these do not apply to Mendham Township. He inquired as to whether this element can be addressed in a very simple fashion. Mr. Conklin responded that there are areas of flood hazard in Mendham Township, which should be reviewed at the very minimum and that there are other geological features to be addressed as well. NJDEP would most likely expect Mendham Township to analyze these areas. However, besides these areas, a full build-out would need to be applied. There was some discussion regarding this build-out requirement with regards to the Master Plan currently under scrutiny.

Ms. Crawford inquired as to whether there is any timetable or any sense of when NJDEP will issue their guidelines. Mr. Conklin stated that it is unknown and that as stated he has reached out to the NJDEP and expects to receive some feedback shortly. Once he does receive this feedback, then a well-informed decision can be made. He opined that Mr. Buzak's office should examine this for the potential legal implications of approving the Land Use Plan that doesn't have this new requirement as part of it. It could potentially invalidate the Land Use Plan by the State.

Chairman Giordano inquired as to the timetable of when the Master Plan Subcommittee will move forward and bring a Master Plan amendment to the Planning Board and that he is assuming that this will take two meetings. Also, he added that the Planning Board would certainly be observant of the flexibility required in that there will be modifications to one specific item caused by the NJDEP's new legislation. Chairman Giordano also posed a hypothetical question (which he did not want answered at this time) regarding a build-out number and the implications of this number with regards to lot sizes along with a potential change in the future at the recommendation of the Planning Board to the Township Committee with respect to zoning separately.

Mr. Conklin responded that a realistic adoption date would be May 1, 2021. He added that these new requirements directly impact the scope and schedule of this project. Until the NJDEP provides clear guidance, it is difficult to identify how much additional work will be required in order to formulate a revised scope and schedule.

Mr. Johnson added that there are many aspects in the legislation that does not even apply to Mendham Township. Regarding hazard mitigation, he stated that his department just completed an extensive examination of this area and that this would be available should Mr. Conklin wish to utilize this material for a further study in light of the new legislation.

Mr. Monaghan stated that what would be very helpful from a Township Committee perspective is the time line for addressing this and opined that May might be too aggressive as a time line given where this matter currently stands. He went on to say that it would be beneficial to have a schedule so it is documented for planning purposes. Mr. Baio stated that he was of a similar opinion so that the Township Committee can begin to address specific circumstances that might benefit a particular parcel, which was perhaps delayed or waiting to see how the Township opined on the new amendment to the Master Plan before moving forward. He opined that he agrees with

Chairman Giordano that it is important that this is all addressed correctly in order avoid any possibility of litigation.

Mr. Conklin suggested that he work with Mr. Buzak's office to analyze this from a legal standpoint and derive some potential options. He is hoping that he receives some feedback within the next week or so from NJDEP. Mr. Conklin clarified also that this is not a separate piece of the Land Use Element but a requirement of the Land Use Element and that the way the Land Use Law is written is that there are ten different requirements of the land use plan and that this is one of those requirements. Theoretically, the Master Plan should not be adopted unless it meets all the individual requirements. Ms. Crawford stated Mr. Buzak's office will be consulting with Mr. Conklin. Mr. Conklin stated that he will be presenting a potential scope to the Township Committee that would adjust the schedule and articulate the meetings moving forward.

Mr. Conklin asked Mr. Cancilla to give an update with regards to the Land Use Element of the Master Plan that has been under review. Mr. Cancilla stated that the biggest issue was the nitrate dilution table projecting how many lots could be available. This needs to be fine tuned to ensure that it is realistic in order to determine how many lots can be created while still maintaining the nitrate dilution requirement. Mr. Cancilla went on to say that they are still working with Princeton Hydro to ensure that the number is accurate and realistic. The new legislation would also need to be taken into consideration as far as the build-out is concerned. He also discussed some of the few minor issues that were brought up in the December, 2020 Master Plan Committee meeting; however, he opined that these issues should be completed pretty quickly. Mr. Baio suggested that Mr. Cancilla reach out to Mr. Tolley in order to schedule a final meeting with the Master Plan Committee to complete the review of the Land Use Element.

A motion was made to open the meeting to the public, and it was seconded. All agreed.

Mayor Sarah Neibart of 1 Samantha Lane joined the zoom meeting. Mayor Neibart stated that she found the meeting very interesting and enlightening. She expressed, however, her frustration with the current Master Plan process and that even before the new legislation, she felt that there have been wrenches thrown into this process. She went on to say that there has not been much development in the Township for a long time and that she has had conversations with Planning Board and Township Committee members regarding rezoning certain parcels. The conclusion to these conversations was that the Land Use Element of the Master Plan must first be completed and adopted by the Planning Board. She inquired as to what elements outside of the new legislation are not completed and what still needs to be done.

Mr. Conklin responded that from the best of his knowledge the basic legislative requirements of the Land Use Element have been met. Currently, the nitrate dilution study and build-out are not technically a requirement to adopt the Land Use Element outside of the new legislation. This study was a recommendation of the Master Plan subcommittee. Ms. Neibart asked for further clarification of the nitrate dilution model study. Mr. Conklin responded that he would be happy to discuss the new legislation from a scope standpoint and went on to say that he was not involved in any authorization of the Nitrate Dilution Model study. Mr. Cancilla stated that it was his understanding that the nitrate study was completed and then followed up by the Master Plan process, which began by using the results of the study to help formulate the Land Use Plan and recommendations. Mr. Conklin stated that the nitrate study was done by Princeton Hydro and was not part H2M's scope. He said that at the request of the Master Plan subcommittee a build-out was requested based on some updated figures in order to provide a new chart within the Master Plan. Mr. Baio clarified that at the last Master Plan Subcommittee a number was presented to the subcommittee from H2M indicating a large number of potential build-out of lots. One of the subcommittee members challenged that figure and asked H2M to revisit this since it

did not seem realistic. Mr. Cancilla confirmed this and explained the process further of what the subcommittee has been trying to accomplish with regards to this number of potential build-out of lots, which is more in the hundreds and not thousands of build-out lots. Ms. Neibart stated that there is a certain level of accountability that needs to be maintained and that folks need to start taking responsibility.

Ms. Neibart stated that there are municipalities that are not doing their Master Plan update this year so they already have Master Plans that allow for development in their towns. She inquired whether these towns must halt all development while waiting for the new guidance from NJDEP from this legislation. Mr. Conklin clarified that this is a requirement when the Land Use Element is updated. The Master Plan must be examined every ten years, and Mendham Township's re-examination was completed in 2018 and that at that time it suggested a Land Use update. Therefore, the Township is still legally in compliance. The reason why Mendham Township undertook the Land Use Element was because of the recommendation included as part of the Master Plan and that this is simply working towards effectuating the recommendation. Ms. Neibart inquired as to whether it is possible for Mendham Township to amend the existing Master Plan without updating the whole Land Use Element in order to circumvent this. Ms. Crawford responded that this is possible, however, there was a re-examination in 2018 of the Master Plan with the suggestion that it be updated. Therefore, the Board is acting on that recommendation towards an update and that the update is not yet completed. With the new legislation, there is not sufficient guidance at this point as to what the new law requires. She stated that Mr. Conklin in his own expertise has viewed this new law as a requirement as opposed to a discretionary element. Her office will confer with Mr. Conklin regarding this matter in terms of other options that should be further discussed. Ms. Neibart added that if the Master Plan had been completed perhaps six or eight months ago, this would not be impacting Mendham Township at this time.

Chairman Giordano asked for a motion to close the meeting to the public after seeing or hearing no one else from the public. A motion was made, and it was seconded. All agreed.

Chairman Giordano entertained a motion to adjourn the meeting at 9:02 pm. A motion was made, and it was seconded. All agreed.

Respectively Submitted,

Beth Foley
Planning Board Secretary