

**MINUTES OF THE TOWNSHIP OF MENDHAM PLANNING BOARD
REGULAR MEETING HELD APRIL 17, 2019**

Chairman Giordano called the meeting to order at 7:30 p.m. and asked for roll call. Upon roll call:

ROLL CALL

PRESENT: Mayor Gisser, Mr. Monaghan, Mr. D'Emidio, Ms. DeMeo, Mr. Mayer, Chairman Giordano

ABSENT: Mr. Johnson, Mr. Perri, Mr. Maglione

Others present: Ms. Valerie Kimson, Esq., Attorney, Mr. Denis Keenan, Engineer, Ms. Nicole Venezia, Planner, Dr. Jack Szczepanski, Environmentalist

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 18, 2018 and Notice was filed with the Township Clerk on January 18, 2018.

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 times.

MINUTES – March 20, 2019

Mr. D'Emidio made a motion to move the minutes to the March 20, 2019 meeting, and it was seconded by Mr. Monaghan with the corrections discussed and noted on Page 12. All agreed.

RESOLUTION 19-04

Mendham Shores, LLC
9 Shores Road
Block 127, Lot 29
Preliminary and Final Major Subdivision

Mr. D'Emidio referred to Item #11 in the Blacklined resolution. He stated that the word "cement" in the last sentence in this item should be changed to "concrete."

Mayor Gisser stated that there were some emails regarding fire suppression capabilities. The Chief responded back that it was not limited to a 3,000-square foot house and that this square footage was just an example that was given. Chairman Giordano stated that the Chief opined that the applicant satisfied the fire suppression capabilities for the development.

Mayor Gisser inquired as to whether the issue of screening has been sufficiently addressed in the resolution. Mr. Malman referred to Letter "I" on Page 11 of the resolution, which addressed the buffering and plantings. Mr. Keenan said that there have been discussions between the applicant and the neighbors, and Mr. Malman stated that Letter "O" of the resolution indicates that there will be further buffering along the westerly boundary in a manner as approved by Township's engineer. Mr. Keenan stated that he will become involved in the process in order

that an agreement may be reached between the neighbors and the applicant regarding the landscaping. If an agreement cannot be reached, then the applicant must return to the Board.

Mr. Mayer inquired about some correspondence he received from one of the residents to the Planning Board members, and Chairman Giordano stated that the letter should not have been read and cannot be introduced. For the record, Chairman Giordano stated that he did not read the correspondence. Mr. Mayer stated that he did read the correspondence, but did not realize that he should not have read it. He went on to say that in relation to the application, he did look at the plans, which indicated that there should be a 15-foot buffer along the property lines and that this should not be disturbed by ordinance. He inquired whether there is a legitimate reason for concern, if this area is disturbed. Mr. Malman stated that he has some concerns about the correspondence between neighbors and the Board members outside the public forum. He said that this is a non-issue at this meeting. Chairman Giordano explained to Mr. Mayer that if there is a particular item in the resolution that he would like to address pursuant to the Township ordinance, then he may address this item at this time. Mr. Mayer continued to say that he is referring to what is indicated on the plans, which also mentions the ordinance and that he would like to add to the resolution that if the area has been cleared in violation of the ordinance then it should be restored. Chairman Giordano stated that it is his understanding of Mr. Mayer's request that it should be reiterated in the resolution that if the plans conform with the Township's ordinance that the applicant must adhere to this. Mr. Malman suggested that it could be added in the resolution that the clearing will be in accordance with the plans that have been submitted and already reviewed. Chairman Giordano agreed with this. Mr. Keenan referred to Sheet 6, which includes a note that he read to the Board about a 15-foot wide tree conservation area, and he opined that this issue is addressed in the plans. Mr. Malman stated that the resolution certainly references the plans. Ms. Kimson referred to the Environmental Restraints Map, Drawing 6 of 22 with a date of 2/8/19 and stated that on the far left side there is note stating that there is a 15-foot wide tree conservation area along the property line in accordance with 23-4A of the Township ordinance. There is also an arrow pointing to this on the plan and that the plans are incorporated within the resolution. Therefore, the applicant is bound by the plans. Mr. Malman stated that Paragraph 2 on Page 2 lists the plans in great detail, and Chairman Giordano went on to say that it appears on the plans that any additional plantings are well outside of the 15 feet. Mr. Mayer stated that he could not vouch for the fact whether the conservation easement was affected but that if it was affected then he could see where a resident would have a legitimate concern. Mr. Monaghan referred to Page 7 and said that the plans indicate that there are plantings in the 15-foot area. Mr. Keenan clarified that there is no issue with planting trees within the 15 feet but that the goal is to preserve any existing trees within the 15 feet. He also confirmed for Mr. D'Emidio that upon his inspection if it was discovered that the 15-foot area was affected, then remediation would be required. This would be standard procedure, and if there is a violation, the plans would offer the protection necessary to address the issue. Chairman Giordano asked Mr. Keenan to perform a site visit to determine whether the 15-foot area has not been affected, and Mr. Keenan agreed to do this with the permission of the applicant. Chairman Giordano summarized that based upon the plans the 15-foot easement will not be affected other than the planting of additional trees and that Mr. Keenan will conduct a site visit around the entire boundary of the property to determine whether there are any issues with clearing. If there is, then Mr. Keenan will address this with the applicant regarding remediation. It was determined that any further clarification or condition in the resolution regarding this issue is not necessary since it is already indicated on the plans with the Township engineer handling it in the field.

Mayor Gisser stated that the curbing issue will be addressed through the DPW at a later date. Mr. Malman stated that the applicant agrees to any of the terms that the DPW requires regarding curbing and will coordinate this on the plans.

Mayor Gisser made a motion to approve the Resolution PB 19-04 granting Preliminary and Final Major Subdivision approval with certain waivers in connection with the subdivision of Block 127, Lot 29 on the official tax map of the Township of Mendham for Mendham Shores, LLC, and it was seconded by Ms. DeMeo. Upon roll call:

AYES: Mayor Gisser, Mr. Monaghan, Mr. D'Emidio, Ms. DeMeo, Mr. Mayer, Chairman Giordano.

DISCUSSION ITEM
BOA Annual Report

Chairman Giordano explained that the Board of Adjustment Annual Report evolved over the years and that the report outlines areas that have become particular issues for that Board. As a result, the Planning Board helps the Board of Adjustment work through these issues. He discussed some past issues that came before the Planning Board with past reports.

Chairman Giordano began with Item A:

Telecommunications and Other Tower Structures

Mayor Gisser stated that the installation of nodes has been addressed based on the application from Verizon. There was also a development of the Communication Act by the state of New Jersey that restricts local municipalities in what they are allowed to do and that there was significant discussions in 2017 when the Verizon application came before the Township Committee. Since this time there has been no additional conversation on cellular communications. Mayor Gisser went on to say that there is some sample legislation at the County level addressing some of these issues. The nodes have been the pressing issue in the community and that all the node locations in Mendham Township have been approved. Mayor Gisser went on to say that he is not aware of any specific action by the Township Committee in 2017, 2018, or 2019 on macro towers or mounting of antennas to existing municipal structures. It has all been related to the node installations. There is an ordinance in the Township with regards to this subject; however, it is largely superseded by the Telecommunications Act that established cellular communications as a priority and a public necessity. He stated that the nodes are fairly benign visually and that it is considered by the State that any improvement in communications outweighs any visual impact. Chairman Giordano added that in the future synthetic phone poles will be replacing the wooden phone poles and that inside the synthetic phone pole will be all of the paraphernalia so that nothing will be seen visually on the outside.

Conservation Markers

Chairman Giordano stated that the Board of Adjustment has had some issues with the standard design (4 x 4) conservation markers and asked Ms. DeMeo if the Environmental Commission could reach out to the Board of Adjustment to pursue this issue further with them. Ms. DeMeo agreed to this.

Calculation of Floor Area Ratio

It was unclear as to the status of this issue, and Chairman Giordano will request further clarification from the BOA.

Lighting

Chairman Giordano stated that the Planning Board is unaware of any further or existing issues as to lighting and that there is nothing on the Township Committee agenda at this time.

Fee Schedule

Ms. Foley clarified that the fee schedule addresses the Board of Adjustment's fee schedule and that she and the past Chairman of the Board of Adjustment reviewed the fee schedule in order to determine how much the fees should be reasonably raised since they do not currently reflect the true costs of an application. She stated that she does have the proposed fees for consideration by the Governing Body and can forward that to the clerk.

Outside Storage of Non-Commercial Recreational Vehicles

Chairman Giordano stated that this issue came up because of one particular recreational vehicle that was being parked on a resident's property and thus creating an issue with neighbors. This particular issue came to the Board of Adjustment many years ago as an interpretation of the ordinance, and it was determined by that Board that it was unclear that the ordinance does actually restrict this. This was raised by the Planning Board with the Township Committee but that no action was ever taken. Mayor Gisser responded that he has not had a resident bring this type of issue to his attention or to his knowledge to any of the other committee members. He opined that this was probably a very isolated case.

Solar Panels and Wind Farms

Chairman Giordano stated that the Board responded to this issue by stating that ground solar panels are only permitted in industrial zones on parcels that are 20 acres or greater so the permitted zones are not relevant to Mendham Township. Also, large wind farms are not a permitted use; however, the Township could establish standards as to height and setback of homebased windmills. Chairman Giordano went on to say that windmills could actually be quite noisy.

Accessory Structures

Chairman Giordano stated that accessory structures are currently handled by ordinance in Sections 21-4.5. Accessory apartments are permitted as Market Accessory apartments (MAA) and Inclusionary Accessory Apartments (IAA). These MAA's require permits that must be annually renewed with an occupancy agreement executed with the Township. He said that the Township Committee never responded to the Planning Board regarding an annual renewal requirement with the addition of a possible administrative fee. This issue has not been back before the Planning Board since that time.

Chairman Giordano stated that he will work with Mrs. Foley and have a draft response prepared for the Planning Board members' review before releasing to the Board of Adjustment.

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

Mr. Eric Mauriello of 6 Woodlawn Terrace approached the microphone. Mr. Mauriello inquired whether a copy of the resolution was made public prior to the meeting. Chairman Giordano stated that the resolution is a document that is sent to the Board members and professionals in draft form in order that they may review it for any comments they may have. Mr. Mauriello also inquired about the most recent version of the plans, and Mr. D'Emidio explained that the resolution has the list of the latest version of the plans and the date of the plans in it. Chairman Giordano also explained that once the Planning Board directs the Board attorney to draft a resolution, then nothing can be changed. Mayor Gisser clarified that the latest version of the plans is dated February 8, 2019. Mr. Keenan clarified that the resolution may have conditions in it that require changes to the plans and must be done so in a very procedural manner. Ms.

Kimson clarified that there was one word changed in the proposed resolution - the word "cement" was changed to "concrete."

Mr. Mauriello also asked for clarification regarding the term "public record." Chairman Giordano explained that the "public record" is via the audio tape that records the hearing as it is being conducted. Also, Ms. Foley provides minutes to the public hearing, which is posted on the website once it is approved by the Board. Also, the exhibits are all part of the permanent record and filed in the Planning Board secretary's office. Chairman Giordano went on to explain that if there is some grievance over action that was taken that there are rights with the judicial system beyond the Planning Board. The Planning Board is restricted as to what can be considered and that it cannot consider issues outside the scope of the Board's authority. This authority encompasses the laws of Mendham with respect to the building codes, the Residential Site Improvements Standards etc.

Mr. Mauriello asked what the protocol would be if something is in the permanent record but it appears that in reality it is not being executed the way it was defined in the permanent record. Chairman Giordano responded that the protocol would be to contact Ms. Foley, the Board Secretary, who would then contact the Zoning Officer. The Zoning Officer would investigate the complaint in order to make a determination of whether the plans are actually being executed as defined. If it is determined by the Zoning Officer that the plans are not being properly executed with any one or all of the items that were defined, then the Zoning Officer has the power of subpoena should the developer be uncooperative in correcting what should have been executed. The Zoning Officer can fine the developer and issue a summons to appear before the municipal court. Also, the CO's for the houses can be withheld until the matter is rectified. Mr. Mauriello asked about the bridge in his neighborhood of Woodlawn Terrace, which he stated is owned by the Township, and what the consequences would be if this bridge was ultimately affected by the new development and stormwater basin. Mr. Keenan responded that the matter would have to be investigated and that it would need to be proved that the engineers' testimony was not correct. He opined that this is not so easily proven on subjective matters such as this. If there is some kind of violation, then this would need to be verified and proven that there is a violation. Mr. Mauriello stated that as part of the public record, he asked Mr. Hansen what percentage of water would be coming off of the developer's lot to his lot as a result of the discharge. Mr. Hansen stated that there would be zero percent coming off of the developer's lot. Mr. Mauriello then asked what the options would be if there was more than zero percent runoff from the developer's lot onto his lot. Mr. Keenan responded that if there is a concrete issue with runoff that can be clearly identified as a direct result of the development in that specific location, then the developer would need to remediate the problem. There are several levels of recourse to ensure that things are going correctly. Chairman Giordano explained that if the developer meets what the law requires for a development, the Planning Board as a quasi-judicial Board does not have the power to prevent this. He went on to say that if a lot is a buildable lot with everything in compliance, then the Board has little recourse to stop it other than approving or disapproving certain waivers and variances. However, again if what is indicated in the plans is being violated, then the recourse would be to enlist the town through the Zoning Officer and engineer to investigate the issue.

Mr. William Kloehn of 3 Reservoir Ridge Road approached the microphone. Mr. Kloehn said it was his understanding at the last Planning Board meeting that there would be a resolution subject to the changes that was discussed that night. He said that there was a long discussion regarding vegetation in general. Mr. Kloehn went on to say that there have been discussions between the developer and himself but that they both are not necessarily in agreement at this point. He would like to know what the process is going forward in terms of a resolution of the issue. Chairman Giordano referred to the Item O, which he read regarding buffering along the

westerly boundary. This was left as a field decision by the engineer as to what will actually be appropriate and that Mr. Keenan will be working directly with the developer with regards to additional buffering. He said that Mr. Keenan will then have to approve the plan that is submitted to him. If the engineer cannot approve the developer's plan, then this would be a detriment to the builder in terms of moving forward since he will be in violation of the resolution. Mr. Kloehn inquired as to whether he would have input with regards to the appropriate vegetation, and Chairman Giordano responded that Mr. Kloehn should speak to Mr. Keenan with any reasonable input he wishes to contribute. Mr. Kloehn also wished to know the timing for the landscaping plan since his home is for sale and that he is having a difficult time selling his house because of the project, which he must disclose to any potential buyer. He went on to say that it would be beneficial if he had a vegetation plan that has been approved in order that a potential buyer can see that the developer is acting in good faith. It would help the value of his house by having a vegetation plan since the buyer would then know more definitively what the property would look like in the future. He added that he would like to see the vegetation plan developed as quickly as possible. Mr. Keenan stated that all of the conditions in the resolution must be addressed before construction can commence as part of the perfection process and that the landscaping plan is one of these conditions. As far as the timing, it is in the hands of the developer and how long it will take for them to address the conditions; however, Mr. Keenan opined that the developer seems to be moving quickly and that it would be reasonable to say that a plan could be developed in the next sixty days. Mr. Keenan stated that once the plan is developed, it would be made available to Mr. Kloehn. Mr. Kloehn emphasized that he would like the status of this issue communicated to him since he could then let any potential buyer know what can be expected.

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

Mr. Mayer inquired as to whether the developer is allowed to start working on the property before all the conditions in the resolution are addressed into the plan. Mr. Keenan responded that it is within the town's discretion to allow certain elements of the project to commence; however, typically it is required to complete all the conditions first. Mr. Mayer stated that this does then initiate a time line to incorporate and finalize the resolution into the plans. Secondly, Mr. Mayer inquired as to whether it would be inappropriate for a resident to request that they be included in discussions with the Planning Board engineer and developer so that any input from the resident may be considered with regards to vegetation. Mr. Keenan responded that he has been in contact with the neighbors and will soon be in contact with the developer regarding the additional plantings and that he would be receptive to this. Mr. Keenan clarified that the permit process begins after the resolution has been perfected and the subdivision filed. He explained that there are many elements that must be addressed first before applying for the building permits and stated that there is a lot of infrastructure that needs to be developed (roads, basin etc.) before the homes can be built, which should happen fairly rapidly with the proposed construction method (engineered construction). However, some of this can be done concurrently.

Chairman Giordano entertained a motion to adjourn the meeting at 8:37 pm. A motion was made, and it was seconded. All agreed.

Respectively Submitted,

Beth Foley
Planning Board Secretary