

**MINUTES OF THE TOWNSHIP OF MENDHAM PLANNING BOARD  
REGULAR MEETING HELD MAY 15, 2019**

Vice Chairman D'Emidio called the meeting to order at 7:30 p.m. and asked for roll call. Upon roll call:

**ROLL CALL**

**PRESENT:** Mayor Warren Gisser, Mr. Monaghan, Mr. D'Emidio, Mr. Johnson, Mr. Perri, Mr. Mayer, Mr. Maglione

**ABSENT:** Ms. DeMeo, Chairman Giordano

**Others present:** Mr. Edward Buzak, Esq., Attorney, Mr. Denis Keenan, Engineer, Dr. Jack Szczepanski, Environmentalist, Ms. Nicole Venezia, Planner

**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, 2019

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 April 17, 2019 minutes, and it was seconded. All agreed.

**APPLICATION – PB 19-01**

Joannah C. Wilmerding Trust  
44 Roxiticus Road  
Block 104, Lot 27.01  
Minor Subdivision

Mr. Bill Bergman made an appearance and stated that he is the attorney for the Joannah Wilmerding Trust, which is the applicant. Mr. D'Emidio stated that the application was not deemed complete at the TRC meeting in February, and Mr. Keenan confirmed that the application does need to be deemed complete since there were a number of comments from the TRC meeting that required a resubmission of a number of items. Since that time he has received additional information, which included slope maps. Also, in his letter dated April 5, 2019, he noted in the checklist items where additional information was provided and that based on the updated information received he would recommend that the application be deemed complete by the Board. Mr. Buzak stated that the recommendation was made to accept the engineer's recommendations to waive the items set forth; however, Checklist Item 51 is being waived for the purposes of completeness but not for the purposes of the hearing. Mr. D'Emidio stated that this was agreed upon at the TRC meeting.

Mr. Maglione questioned whether the application should be deemed complete and presented an opposing viewpoint on this matter. He discussed an application that came before the Planning Board about twenty years ago (Brookrace) and at which time the applicant of this particular

development was required to provide extensive data with regards to the development of the property such as wetlands, slopes, and any sort of environmental conditions that could be mapped. This parcel was an adjoining piece of property to the Wilmerding property, and the Wilmerding's and other adjoining property owners attended the hearings regarding the development. They presented their viewpoint that this area was of supreme environmental value. The data submitted was the subject of intense scrutiny by the Board all under the proviso that since the property contained such environmentally sensitive land that the utmost precautions needed to be maintained. Mr. Maglione objected to deeming the current application complete and allowing the waivers when twenty years ago the same waivers would never have been granted for the aforementioned development. He granted that the applications are different, and that his questioning this is not intended to be punitive but simply as a matter of equity. He opined that the process should be consistent for all applications. Mr. D'Emidio responded that the applications are much different since Brookrace was a major subdivision and that this application is just a matter of splitting off a lot into two lots. He stated that at the TRC, it was proposed that there would be no building on the new lot and that it would only be a matter of creating a new lot on the maps. He said that the TRC agreed that the items could be waived in order that the application is deemed complete for the purposes of hearing the application.

Mr. Bergman assured Mr. Maglione that there will be no development on the piece of property that is being created (Lot 27.05), if subdivided. It will be deed restricted so there can be no further development. He stated that he is authorized to make this as part of the proposal and that this was stated at the TRC meeting and could be formalized at this evening's meeting. Mr. Bergman stated that one positive aspect of the application is that nothing changes – no development, no proposed structures and that the land will be exactly the same in the future. He went on to say that quite a bit of information was submitted to the engineer, which included the flood boundary line, the wetland line, steep slopes etc. and that there is nothing environmentally involved with this application. The proposed lot will continue to be used as a pasture. Mr. D'Emidio opined that he is comfortable in granting the waivers. He asked whether the Board has the ability to require some of the items that were waived if it is deemed so during the course of the proceedings. Mr. Buzak responded that if this was the thought process, then the items should be waived solely for the purposes of completeness in order that the application can be heard. He explained that the purpose of declaring an application complete is to initiate the time constraints as set by statute by which to act. The Planning Board has 45 days from the date an application is deemed complete to grant or deny a minor subdivision approval. Failure by the Board to act within this period constitutes an automatic approval. So if it is determined by the Board that perhaps during the proceedings an item(s) should possibly not be waived after all, then the typical action is to waive the items for purposes of completeness but not for purposes of the application. Mr. Bergman added that if the Board is not satisfied with anything that is presented at the meeting and requests additional information, he will be happy to provide this. Mr. Buzak clarified that if the Board grants the waivers for completeness only, then the application can be heard. If there are items raised during the hearing that the Board feels should be addressed then this information can be requested. However, the Board must keep in mind that the 45-day constraint begins once deemed complete and whereby the application must be acted upon by the Board, unless the applicant allows for an extension at their discretion.

Mr. Buzak went on to discuss the materials for the application that were submitted to the Township engineer. He asked Mr. Bergman whether these same materials were submitted to the Board members as well. Mr. Bergman responded that at the request of the engineer the materials were just sent to the engineer. Mr. Buzak stated that the difficulty with this is that the Board members have never seen these materials related to the application. He went on to say that Mr. Keenan's letter dated February 21, 2019 indicated several items that were not included

in the submission of the application. One of these items was the Environmental Constraints Map (Checklist Item #36) amongst other items and that this item was ultimately submitted to Mr. Keenan but not to the Board members. Mr. Buzak stated that he should have been more cognizant about communicating to the applicant that these items should also have been submitted to the Board members as well. Mr. Perri interjected that the professionals need to be sworn in at which time Mr. Buzak swore them in even though this might have been done at the Reorganization meeting. Mr. Keenan stated that the Topographic Map was also since submitted as well as the Slope Analysis Map; however, the Slope Analysis Map provided no quantities with regards to the slopes. Mr. Buzak stated these quantities would normally be important when there is development; however, with this application there is no proposed disturbance. Mr. Maglione stated that he would like to alter his position in response to Mr. Bergman's statement, whereby he indicated that there would be no future development of the two parcels of land as a result of the subdivision. In essence a new lot line is being created and that Lot 27.05 will remain in perpetuity. Mr. Bergman referred to Exhibit A1, which is the subdivision plan the Board members have before them in their packet. He went on to say that Mr. Aldrich, the surveyor for the applicant, colorized in green the proposed new lot. He pointed out the north branch of the Raritan River that flows through the property and that the representation he is making has to do with proposed Lot 27.05, which is 4.771 acres. Mr. Bergman went on to say that he has been authorized to agree that this piece be deed restricted with no further development and no disturbance in perpetuity. He went on to say that he cannot make the same representation as to the remainder property, which is about 27 acres. However, he would like to suggest that it is very difficult for any type of development on this lot because of all the environmental constraints. The proposed Lot 27.05 is well within the 10-acre zoning for that piece of land and that he could include in the resolution, if the Board is so inclined, that this restriction of no further development be included in the deed, which will be recorded in the County Clerk's office. Mr. Bergman also clarified that the applicant did not ask the surveyor to obtain an LOI issued by the DEP under the circumstances of this application. Mr. Maglione argued that with a typical subdivision this information would be required and that the delineation would be used to impose restraints on both parcels. He went on to say that he was under the assumption that there would be no further development with both lots, which is not the case. He opined that to be consistent the delineation should be required in order that the environmental constraints be apparent for the record. There was some further discussion regarding the delineations on both properties, and Mr. Keenan stated if a property obtains an LOI, DEP would ensure that any buffers that carry across a property line are included. DEP is allowed to have access to a piece of property for this purpose, and if they cannot enter the property, then the buffer starts at the property line. Mr. Keenan added that from a completeness standpoint, it is known that there are wetlands on Lot 27.05 and that it is virtually inundated by wetlands or wetland buffers. It is a worst case scenario and that it is known that this lot is undevelopable. If it is not perfectly delineated, he opined that it would not change the perspective too much and that this would be the case on the larger remaining Lot 27.01. Mr. Keenan opined that there are enough facts presented to understand what the application entails. Mr. D'Emidio proposed to grant the waivers for completeness only for the purpose of hearing the application.

Mr. Mayer stated that he has something that might be construed as a potential conflict of interest. Mr. Villa of the firm Yannaccone, Villa, and Aldrich, LLC is now his son's father-in-law. He said that if anyone construes this as a conflict of interest, he would recuse himself from voting on this particular application. Mr. Bergman clarified that Mr. Villa, although his name appears on the documents, is no longer a principle at this firm since he has since retired from the firm. Mr. Buzak confirmed that there are no issues for Mr. Mayer with regards to the Board and the public; however, Mr. Mayer can decide whether he chooses to vote on the application or not. Mr. Monaghan also stated that he has known the Wilmerding's for a number of years and has served on the first aid squad with Mrs. Johanna Wilmerding. He asked if this would present

a conflict. Mr. Buzak explained that the structure of a Planning Board made up of citizens of a municipality and applicants dealing with property in that municipality tend to continually create this type of situation. As a result, this in itself is not a conflict at all. However, if any member feels uncomfortable because of a relationship with an applicant, then the member should recuse himself or herself from the application. Mr. Monaghan stated that he is comfortable with participating in the application and that his relationship with the Wilmerding's will not influence his vote.

Mr. D'Emidio made a motion to grant the waivers for completeness only for the purpose of hearing the application, and it was seconded by Mr. Perri. Upon roll call:

AYES: Mayor Gisser, Mr. Monaghan, Mr. D'Emidio, Mr. Johnson, Mr. Perri, Mr. Maglione  
NAY: Mr. Mayer

Motion carried.

Mr. Buzak stated that the property that is before the Board is not Lot 27.05 (this lot does not exist). It is the approximate 31 acres of property (Block 104, Lot 27.01), which is the subject matter of this application. The applicant intends to subdivide a piece of this property and create a separate lot. Mr. Buzak stated that if development occurs on the remainder lot (27.01), if subdivided, the application would not come before the Planning Board. This Board only handles subdivisions or site plans and that an individual single family dwelling is exempt from site plan requirements. Therefore, it becomes important in the scheme of things that when reviewing an application such as this that the focus is not just on the proposed new lot but also on the remainder lot. If there are significant environmental constraints on the remainder lot, the Board may wish to address this since this is the opportunity to deal with it. If the approval is granted to create a smaller lot, the jurisdiction by the Board over the smaller lot is finished along with the jurisdiction on the remainder lot. Any future structures on the remainder lot would require a building permit, and if a variance is needed to build on the remainder lot, it would need to go to the Board of Adjustment.

Mr. Bergman began by reading into the record his Opening Statement dated May 15, 2019. This Opening Statement is part of the record and will become part of the minutes as an attachment. Mr. Buzak clarified that this statement is not testimony and only an Opening Statement. As a result, none of this could be relied upon by the Board in terms of making a decision. Mr. Bergman stated that he has three witnesses, Mr. Christopher Aldrich, Professional Land Surveyor of the firm Yannaccone, Villa, & Aldrich, LLC, who prepared the subdivision plan, Ms. Joannah Wilmerding, who resides on the residence lot and very familiar with the farming operations and Trust operation, and Ms. Elizabeth Leheny, Professional Planner and who will address the variances requested in this subdivision. Since Ms. Joanna Wilmerding left the hearing, Mr. Harry Wilmerding became one of the witnesses in place of Mrs. Joannah Wilmerding. Mr. Buzak swore in all three witnesses.

Mr. Christopher J. Aldrich of the firm Yannaccone, Villa & Aldrich, LLC, entered an appearance as a licensed Land Surveyor on behalf of the applicant. To allow for a voir dire by the Board and persons in attendance, Mr. Aldrich stated that he is a licensed land surveyor in the State of New Jersey since 1990 and has been a principle in the firm Yannaccone, Villa & Aldrich, LLC since January of 1997. Mr. Aldrich stated that the map was prepared under his supervision and that he has testified as a professional land surveyor and has prepared subdivision plans in the past that have been reviewed by Boards. After hearing no objections from both the Board members and public regarding Mr. Aldrich's qualifications, Mr. D'Emidio stated that Mr. Aldrich is accepted as an expert witness in the capacity of surveyor for the applicant.

Mr. Aldrich began by saying that Lot 27.01 is about 31 acres and indicated the property on Exhibit A-1. The residence lot is a relatively steep lot with the somewhat level area already developed. He opined that this lot would be very difficult to develop in the future. He went on to say that the proposed Lot 27.05 is the pasture piece of the 31 acres, which is divided by the north branch of the Raritan River. It is all pasture with almost no slopes (very flat) over ten percent and has some river bank. The pasture property is completely constrained by wetlands and environmentally undevelopable. Mr. Aldrich stated that the building envelope is really non-existent with the required setbacks in this zone. He went on to say that from the pasture viewpoint, only woods and trees can be seen from across the river onto the residence property (Lot 27.01), which again is all steep land just beyond the river bank on that side. Mr. Aldrich stated that the residence lot has its own septic system and its own well and that this does not impact what is being proposed with this application. He confirmed for Mr. Mayer that proposed Lot 27.05 is considered all wetlands. Mayor Gisser inquired whether the property is farm assessed. Mr. Bergman responded that he knows that a portion of the existing lot is farm assessed because of woodlands harvesting, which takes place on the rest of the property where there are woodlands. He said that there is very little impact from a tax standpoint on proposed Lot 27.05 since it is only about four undevelopable acres and that the farm assessment has nothing to do with the grazing on this pasture lot. Mr. Buzak added that this may be the case generally; however, he opined that if the property is farmland assessed based on the harvesting of wood, it is a certain amount of dollars produced per acre. The wood does not have to be cut from that portion of the property that is being farmland assessed. While there may be no harvesting in this area, it cannot be said that this piece is not being assessed based upon farmland assessment. Mr. Mayer clarified that the current parcel referred to as the pasture lot is considered part of the farmland assessment with only the area around the house that is not farmland assessed. The proposed lot 27.05 (the pasture lot) would be unable to be farm assessed since it is undersized and the fact that it is less than the five acres, which is required for farmland assessment. It will also have its own tax bill.

Mr. Keenan inquired about the two proposed lots in relation to environmental constraints. He stated that the pasture lot is fully encumbered and asked Mr. Bergman what is encumbered on the single family lot (Lot 27.01) since there is a stream running through it with 300-foot buffers. Mr. Aldrich referred to Exhibit A1 and indicated the wetlands buffer from the DEP delineated wetlands. Again, an LOI was not conducted since it was not required as part of the subdivision. Also, behind the house there is another 300-foot riparian buffer with another 300-foot riparian buffer on the lower portion of the property line. The house itself is fully located within the 300-foot riparian buffer.

Mr. Mayer inquired about Lot 27.02 and whether this is already a pre-existing small lot. Mr. Aldrich confirmed that it is a pre-existing lot and that it is right on the corner of Roxiticus Road and Union School House Road. It is the residence for the Wilmerding's caretaker. This is also in the R-10 zone and a non-conforming lot to the zone. Mr. Bergman clarified that this lot was created as part of the 2011 application before the Planning Board and that it has its own septic system and shares a well with the other side of Roxiticus Road.

Since there were no members of the public present to question the first witness, Mr. Bergman called his next witness, Mr. Harold Wilmerding. Mr. Wilmerding confirmed that the residence lot and the farm lot are owned by the same entity, The Joanna C. Wilmerding Trust and that he is familiar with how the proposed pasture has been used by the farm lot over the years. He stated that the proposed pasture lot has always been used as pasture and nothing more. It is in the wetlands, and it could probably never be productive if it were depended upon for any type of farming beyond its use as pasture land. He stated that the pasture lot is used for the grazing of

sheep, ponies and a donkey. Mr. Wilmerding went on to say that this application is primarily for the future convenience of an owner who may wish to continue to farm the property, which is presently preserved for this purpose and to offer access to this pasture land in order to satisfy their needs as has been used for the past fifty years or so. He stated that he has lived on the property for well over fifty years and has been involved with the production of sheep and lambs and has used it for this purpose. The purpose is to ensure that the pasture property remains available to the farm lot for pasturing regardless of who in the future will own and reside on the residence lot. Mr. Wilmerding confirmed that other avenues other than a subdivision have been explored by the Trustees and the Wilmerding family and that this proposal is the best alternative. He opined that there could be no other use for Lot 27.05 and that any potential development is really not possible. Mr. Wilmerding stated that he is familiar and aware that the Trustees have authorized Mr. Bergman to agree that there be a deed restriction for no further development in the future in perpetuity so that this property will remain an integral part of the farm operation over the coming years. Mr. D'Emidio inquired whether Lot 46 is in farmland preservation, and Mr. Bergman confirmed that it is in farmland preservation and will remain as such in the foreseeable future. He asked whether the pasture would be sold as part of the farm land. Mr. Bergman stated that this would make sense because there will also be an easement placed on the pasture lot in favor of the farm whereby the farm will have the right to continue to use it. The question is whether the pasture could be required to be sold as part of the farm. Mr. Bergman clarified that if someone in the future buys the pasture lot that the farm must be allowed to pasture their animals on it because of the easement. This does not make it very attractive to a potential buyer for the pasture lot alone.

Mayor Gisser referred to Mr. Keenan's report dated April 7, 2019, Item #7 regarding the maintenance of the newly created undevelopable lot, which indicates that consideration should be made to ensure that this lot will not become a burden to the Township with regards to its maintenance. He wished to know how this would be addressed in the future. Mr. Bergman responded that if the pasture lot is not sold as part of the farm property sometime in the future, it will continue to be owned by the Trust, and the Trust will be responsible for the maintenance of this property. However, he stated that the Trust could sell it at some point, and it was also pointed out by a few of the Board members that they can stop paying taxes on it. Mayor Gisser asked if there was a way to address the perpetual maintenance so that it does not become potentially burdensome to the town. There was some discussion regarding the maintenance issue if the land transfers ownership or if the Trust stops paying taxes on the property. Mr. Keenan stated that he is not clear as to how to protect the town against the possibility of the town being burdened with maintaining the property in the future. He opined, however, that the easement is good idea. Mayor Gisser confirmed that this can become an issue. Mr. Bergman opined that since the farm is a preserved farm, it cannot be used for anything other than this purpose and that proposed Lot 27.05 is foreseeably to be used as it is currently being used, which is for pasturing. Mr. Perri suggested that the pasture property be deeded to the farm; however, Mr. Keenan opined that this most likely cannot be done since the pasture piece and the farm are physically separated by the road and not adjoining lots. Mr. Bergman went on to say that the Trustees wished that this lot be available for farm use and not burden a buyer who might be interested in buying the residence and not the farm and who may not want someone else's livestock pastured on their land.

Mr. Keenan inquired whether the caretaker's lot, Lot 27.02 and also owned by the Trust, could be combined with the pasture land since this is also an undersized lot and if combined would make for a more acceptable lot. Mr. Bergman opined that the caretaker would not be inclined to want to take care of the pasture property. If the two lots were combined, Mr. Maglione stated that there could still be no building on that lot since the prior approval stated that no new building lots, development, improvements, or disturbance of any kind are proposed as part of

this application. The application he referred to was the prior approval in 2011 when Lot 27.02 was created when Lot 27.01 was subdivided. There was some further discussion regarding these lots and their limitations. Mayor Gisser observed that the contours of proposed Lot 27.05 seem to be driven largely by the Raritan River, which is a natural boundary between Lot 27.05 and Lot 27.01.

Mr. Buzak raised the issue of the deed for clarification purposes. He stated that the application is proposing to create an undersized lot, which is considerably less than the minimum lot size. The other ancillary issues raised thus far by the Board are given as to why this should be allowed and as a result, whether to deviate from the requirements that are in this zone. He said that the three lots that have been discussed are the remainder lot (residence lot), the pasture lot and the 42-acre lot across the street, which is not part of this application. The tenant of the lot across the street is using the proposed new lot by creating an easement. If the road were not present, the application would be very simple; however, this is not the case. Therefore, there are three separate lots that can be conveyed to three separate potential owners. Mr. Buzak stated that the applicant's suggestion is to put a restriction on the proposed Lot 27.05 to not build on it, which should ease the Board's concerns with regards to creating an undersized lot. This stipulation appears to accomplish this objective; however, covenants and restrictions are part of the record only - people can bring title actions to vacate these restrictions in certain situations in the future. He reiterated that these restrictions are not iron clad when challenged at a future time by a future owner. Mr. Buzak clarified, however, that the primary purpose is to allow this property to continue to be used as pasture land for the farm, which is not part of the application. He opined that an easement may be placed on the delineated 4.771 acres (not as a subdivided parcel) with the intent that this property can only be used for pasture land by the owner of the property across the street on Lot 46. As a result this would not become an orphan lot but part of the 31 acres. This would certainly accomplish the objective. However, what it does not accomplish is that the person who buys the 31 acres (the residence lot before any subdivision) will be less inclined to buy this property because the 4.771 acres are not usable. Also, the owner of the lot across the street would be allowed to graze on this lot. He went on to say that this would have an effect on the value of the residence lot; however, the subdivision would also have an effect since the remainder 4.771 acres would contain an easement for access for use of the farm across the street, which may also affect the residence lot's value. Mr. Buzak expressed concerns about the Board being asked to create a subdivided lot for reasons that seem to be able to be accomplished without creating an orphan lot. Mr. Bergman added that this was certainly all considered by the Board of Trustees who had appraisals done. He went on to say that the Trustees believe that by not subdividing the property that it would affect the marketability of the Wilmerding residence significantly since taxes will be paid on this property and it will be used by the people across the street for their animals. He went on to say that there is also a liability issue involved since they cannot prevent any farm use from coming across the street and using it. This is why the Wilmerding's submitted a subdivision application accompanied by an easement to ensure that the farm will be able to continue to use this Lot 27.05 in perpetuity. Mr. Buzak stated that the intent here is to ensure that the new proposed lot be sold to the same people who buy or own Lot 46 across the street. The question becomes how this objective can be accomplished since there will be three new lots created, which can be owned by three different people and how it can be ensured that the new proposed Lot 27.05 and Lot 46 across the street remain in common ownership or conveyed to common owners and not separated in any way. Mr. Bergman responded that in this situation there is a piece of property that is undevelopable as indicated by all the testimony regarding environmental constraints. He opined that there is no incentive by a future owner to try and overturn what this Board may decide with regards to the approval of this application. He stated that he is not opposed to a provision that the Trust make every effort to sell Lot 27.05 as part of the farm property in the event the farm property is sold down the road. However, he opined that it should

not be stipulated that it must be sold as part of the farm across the street since he does not know how this can be enforced. Mr. Bergman responded that they would have no problem with this. Mr. Keenan stated that if Lot 27.05 is made a part of Lot 27.02 where there is an existing home, then there would no longer be an orphan lot with the safe guard that the Township would never have responsibility for it. Mr. Maglione opined that he would not be concerned with keeping the proposed pasture land with the residence property since the owner can control what they wish to do with it (perhaps by renting it out to the owner of Lot 46). It is also an integral part of the residence property already. Mr. Bergman reiterated that the Trustees made a determination that by not subdividing the property it will affect the marketability of the residence property substantially. Also, by combining Lot 27.05 with Lot 27.02 the owners of Lot 27.02 will be paying taxes on the pasture piece and that the owners across the street will be using it for their farm animals, which will create a liability issue. Mr. Bergman stated that he is willing to provide a provision that will be part of the resolution, which will be attached to the deed, that in the event the property is sold across the street that the Trustees will make every reasonable effort to include the pasture lot in the sale and that in any event the Trust will continue to be responsible for maintenance of the property for as long as they own it. Mr. Buzak added that the issue here does not involve the Trust but the fact that once another lot is created it is in the best interests of the Trust and its beneficiaries of the Trust to someday sell the farm and/or the residence. Mr. Bergman added that whoever will own the farm someday must use the farm for farming since it is in farmland preservation and that the farm needs this pasture lot and has used this lot for this purpose for 50 – 60 years. He went on to say that the beauty of the application is that an undersized lot is being created but that nothing is going to change. Taxes will still be paid on the property with its own individual tax bill, and it will be preserved at infinitum. If Lot 27.01 is not subdivided, then there are marketability issues for a future sale. He opined that the pasture piece is not really integrated with the residence since it is set so far apart from the residence and that it cannot be seen from the house. However, the pasture property is right across the road from the farm.

Mr. Bergman called his next witness. Ms. Elizabeth Leheny of the firm Phillips Preiss at 33-41 Newark Street in Hoboken entered an appearance as Planner for the applicant and stated that she is a principle in the firm. She stated that she is a licensed professional planner in the State of New Jersey and a member of the American Institute of Certified Planners. She has been licensed for ten years and has appeared before many Boards and on behalf of Boards throughout the State of New Jersey. Ms. Leheny stated that she received her Planning degree from MIT. After hearing no objections from both the Board members and public regarding Ms. Leheny's qualifications, Mr. D'Emidio stated that Ms. Leheny is accepted as an expert witness in the capacity of Planner for the applicant.

Ms. Leheny began by saying that she was retained by the applicant because there are variances associated with the proposed new lot. The existing lot that would remain would be approximately 26 acres that has a minimum lot size of 10 acres in the zone and that there are no variances required for the residence lot should the subdivision be approved. With the proposed Lot 27.05 (pasture lot) several variances are required, which includes insufficient lot size, insufficient net building envelope area, insufficient contiguous net building envelope area, insufficient lot geometry circle and insufficient building envelope circle. She added that all of this is not necessarily relevant because there will be no development on this lot; however, the variances are still required. Ms. Leheny stated that the applicant is requesting C2 flexible bulk variances and that she will provide testimony as to why the benefits of the deviation substantially outweigh any detriments. The farm across the street and the Wilmerding residence are in common ownership and that at some time in the future this property may take on new ownership. The farm is already preserved as farmland and that the same sort of protection is



not extended to the Wilmerding residence estate. The purpose of the subdivision is to ensure that proposed Lot 27.05 continues to be used as pasture land in perpetuity.

Ms. Leheny went on to say that the benefits to the property owner are twofold. The land will continue to be used as pasture land, which is very important to the Wilmerding's since they would like to see this continue to be used as it has been used for decades. Secondly, the pasturing can continue but that the residence can be sold unencumbered. There would be no obligation for a future owner to become a farmer. Ms. Leheny continued to discuss the public benefits regarding the subdivision. She stated that the property would be deed restricted as pasture land with no development and that the open space would also be protected. The environmentally constrained land and the community character of the roadway (which is historic and scenic) would also be protected. This property is also in the Ralston Historic District and is a contributing property within this district and that it would be protected and used in its historic manner. She went on to say that she cannot sight any detriments. The MLUL would also be advanced, and she read Purpose A, Purpose G, Purpose I and Purpose J from the MLUL.

Ms. Leheny continued to say that there would be no substantial detriment to the public good and no substantial impairment to the intent and purposes of the Township's zoning ordinance. She opined that this will not compromise the integrity of the R-10 zone since the circumstances are somewhat unique. There is the historic and scenic nature of the property, its location, the decade's long relationship with the farm and the location of the river, which creates a natural boundary between the pasture land and residence property. There is quite a distinction topographically between these two proposed lots with the pasture land, the river, and the steep slopes leading up to the residence house. She also opined that granting the variance will not set a precedent for undersized lots in the R-10 zone since this is a somewhat unique set of circumstances with regards to this application.

Ms. Leheny went on to say that this is consistent with the 2002 Master Plan goals and objectives, including the goals to retain the traditional character of Mendham Township along with protecting the Township's environmental resources as well as the objective that open space areas should be protected and expanded, especially areas important to environmental protection, historic preservation and community character. The subdivision is also consistent with the Land Use Plan, which states that the preservation of the traditional, rural, historic character is the single most strongly held planning goal of the Township residents and should be a central goal of Mendham Township's development policies. The plan notes that the first key to preserving the Township's character is to preserve the character of the many historic public roadways and the highly visible areas immediately next to them. Further, the plan states that environmentally sensitive features should be protected by carefully administered controls. Ms. Leheny opined that the subdivision accomplishes all of this.

Ms. Leheny summarized that the applicant meets the goals and objectives of the Master Plan and that there will not be any substantial impairment to the intent and purposes of the zoning ordinance.

Mr. Mayer inquired what the difference would be in not granting the subdivision as opposed to granting the subdivision. The pasture land is not developable and preserved by all the environmental constraints. Ms. Leheny responded that there probably is no difference. The pasture piece is undevelopable so there will never be a structure on this property. However, beyond all the reasons that have been stated, it is the marketability, liability and desirability of someone wanting to buy a parcel that has this piece of property that is used for pasture land. Also, the testimony regarding protection of open space is significant with the subdivision. Mr. Mayer opined that in reality the pasture is only useful to Lot 46 across the street. Mayor Gisser

opined that there is an inherent benefit to the community, which is that by bifurcating the property into two pieces it enhances the value of the current residence. The value is in the protection of the value of real estate in Mendham Township and that he has no issue with the Wilmerding family maximizing economic value for it because their maximization of economic value results in better value for the Township in terms of ratables. Mayor Gisser stated that along with enhancing the value of the residential piece of property another benefit is the preservation of a piece of property that is intimately tied to the farm (Lot 46). He sees no detrimental impact to the application.

Ms. Venezia stated that Ms. Lanney addressed all the points with regards to the C2 flexible bulk variances and that her testimony is properly given in regards to the variances requested for this application.

Mr. Mayer stated that currently these properties are restricted from any development from the time of the last resolution in 2011. There was some further discussion regarding the prior 2011 application that came before the Planning Board whereby there was no new building lots or developable land proposed. Mr. Bergman opined that the 2011 application was not meant to address the land use in perpetuity. However, Mr. Bergman would be willing to change the fact that this property would be constrained in perpetuity and that the Trust will make every reasonable effort to sell the pasture lot with the farm lot at the right time and place when the farm lot is being sold in the future. He also stated that regardless of what happens with the farm lot that the Trust will be responsible for the maintenance of the pasture lot in perpetuity until it no longer owns it. Mr. Buzak stated that he could not find any condition in the approved 2011 resolution either in the general conditions or specific conditions that addresses the construction on the residence lot.

Mr. Bergman stated in closing that he has indicated the latitude he has as far as representations are concerned and that these representations are true. The deed restriction would be put in the resolution and would be an attachment to the deed along with what was raised regarding the Trustees making reasonable efforts to market the pasture at such time that the farm lot is sold. The Trustee would also be responsible for maintenance as long as need be.

Mr. Buzak stated that Mr. Maglione pointed out a general provision in the conditions of the 2011 resolution, and Mr. Bergman and Mr. Buzak read the references that were made regarding development as part of that application. There was some disagreement between Mr. Maglione and Mr. Bergman as to whether references were made to a prior agreement that no development could occur on the lots in perpetuity as part of the 2011 application. Mr. Buzak stated that after reading the language of the 2011 resolution that it is not precise enough to make a determination, and he opined that this reference is really in relation to that particular application presented in 2011. He opined that in fairness to this applicant, he does not believe that no development on the residence lot meant "in perpetuity" at the time of the 2011 application.

Mr. Buzak stated that there was a report from the Environmental Commission, which raised some issues regarding the use of these premises as pasture because of possible contamination of the river by the animals. Mr. Szczepanski responded that this could certainly contribute to nutrient loading, which does change water quality but that this has been a use for decades and therefore the condition of the river is not being altered. The farm is across the street anyway, and the river is bordering the farm on its side and that by eliminating use of this parcel is not really eliminating the waste most likely entering the river. He stated that he is not exactly familiar with the way the drainage area is configured, but again, where the river is located on the plans and where the road crosses, it still borders on Lot 46. He opined, therefore, that this

would not change much as far as any animal contamination. Mr. Buzak stated that the report indicated that water quality data is collected and tested annually by the Raritan Head Waters very close to this property at the corner of Mosle Road and Union School Road and that scores have been good for the past several years. If the scores become troubling, Mr. Szczepanski stated that the DEP would need to determine whether it is from the animals in that exact location.

Mr. Perri made a motion to approve Application PB-19-01. Mr. D'Emidio inquired whether the motion should direct the Board attorney to prepare a resolution for the Board's consideration in light of the conditions that are being considered. Mr. Bergman stated that this is perfectly acceptable to the applicant. Mr. Perri, in modifying his motion, stated that the motion is subject to the attorney providing the Board with a resolution outlining what was discussed and agreed upon as certain conditions for the purpose of the Board's pending review of the proposed resolution. Mr. Monaghan seconded the motion. Upon roll call:

AYES: Mayor Gisser, Mr. Monaghan, Mr. D'Emidio, Mr. Johnson, Mr. Perri

NAYES: Mr. Maglione

ABSTAIN: Mr. Mayer

Mr. D'Emidio entertained a motion to open the meeting to the public, and it was second. Seeing or hearing so comments from the public, a motion was made to close the meeting to the public, and it was seconded.

Mr. D'Emidio entertained a motion to adjourn the meeting at 9:32 pm. A motion was made, and it was seconded. All agreed.

Respectively Submitted,

Beth Foley  
Planning Board Secretary