

**MINUTES OF THE TOWNSHIP OF MENDHAM PLANNING BOARD
REGULAR MEETING HELD October 21, 2020**

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

ROLL CALL

PRESENT: Mr. Baio, Mr. Monaghan, Mr. D’Emidio, Ms. DeMeo, Mr. Mayer (via conference call), Mr. Maglione, Chairman Giordano
ABSENT: Mr. Johnson, Mr. Perri
Others present: Mr. Dennis Keenan, Mr. Edward Buzak (via conference call), Mr. Jeffrey Jaconta (via conference call), Mr. Jack Szczepanski (via conference call)

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 February 19, 2020 minutes, and it was seconded. All agreed.
ABSTAIN: Mr. D’Emidio

RESOLUTION – PB 20-4

Standard Procedures for Remote Meetings

Chairman Giordano stated that this resolution establishes standard procedures for remote meetings with regards to accessing presentations and documents viewed or made available to attendees and making public comments at meetings or by electronic mail or written letter in advance of the meeting in accordance with N.J.A.C. 5:39-1 et seq. These are regulations adopted by the Director of the Division of Local Government Services in the Department of Community Affairs because of COVID. Chairman Giordano stated that the Board would need to adopt this resolution to be able to conduct future meetings in absentia. Mr. Buzak stated that this is a resolution that only applies if there is a remote meeting and is not applicable for an in-person meeting. However, the procedures should be in place so that if the occasion arises for a remote meeting, the protocol has been addressed.

Mr. Mayer joined the meeting via teleconferencing at 7:35 pm.

Mr. D’Emidio inquired whether the Township Committee has adopted such a resolution, and Mr. Monaghan responded that they probably will adopt a resolution with regards to standard procedures such as this. He said that all of the Boards fall under this rubric; however, the ad hoc committees etc. do not fall under this rubric.

A motion was made by Mr. D'Emidio to approve the resolution, and it was seconded by Mr. Monaghan.

Upon roll call:

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

DISCUSSION ITEMS

(2) REZONING REQUESTS

Chairman Giordano stated that the Planning Board has been asked by the Township Committee to consider two re-zoning requests that were sent to the Committee. Neither of these are applications before the Planning Board. He went on to say that there is currently a Master Plan reevaluation being conducted that will encompass re-zoning requests such as these and that this reevaluation will be ready in approximately two months. He opined that to change any zoning without the benefit of the data contained in either the Land Use or the Planning Element is basically reckless. To begin, there was time, money and effort spent into revising a portion of the Master Plan for the sole purpose of addressing rezoning issues. Secondly, Chairman Giordano opined that to consider these requests in piece meal fashion can be argued to be a form of spot zoning and that the entire Township should be considered and not individual lots. The Township Committee may want to rezone certain parts of the Township in a way that is in the best interest of the overall Township and not because developers are requesting it for their own interests.

Lastly, Chairman Giordano stated that some information was received from the Environmental Commission, which is more detailed with regards to the Nitrate Dilution model. This information indicates that it is not quite clear as previously thought after reading one of the summaries in terms of the number of additional building lots that would be allowed within the Township.

Mr. Szczepanski responded that on a Township and zoning level scale the Nitrate Dilution model is more accurate; however, on a lot level or finer scale it is not as effective. It is more effective at a larger level scale of modeling. There is a certain amount of wiggle room when it comes to the prediction of equivalent dwelling units that can be added based on the nutrient levels set by the State. Mr. Szczepanski also said that there is some wiggle factor in terms of looking at minimum lot size plus the nutrient threshold. It could work in a zone scale; however, again not on a finer scale for lots. He clarified that the report indicates that the data shows that there are 1,956 homes and that the absolute most conservative and stringent measures allow for another six (6) homes. It is broken up by zones; but if only the State's nutrient threshold is taken into consideration, there are roughly 722 houses allowed. It depends on where the zoning changes occur and where the development happens. He went on to say that building on lots under three acres will have more of an impact on overall ability of the Township's land to absorb and dilute the wastewater through septic systems. Therefore, there is greater impact with smaller lots.

Mr. Baio added that the model was based on the subterranean soil makeup in specific locations and not for subsoil conditions for every lot in Mendham. Mr. Szczepanski explained that in terms of the model for the drinking water there was a lot of room for expansion. This is not a limiting factor. There was some further discussion regarding ground water and the impact of the nitrates on the environment and health of the residents.

Mr. Mayer opined that it is currently premature to consider the two rezoning requests based on the fact that the Land Use and Housing Plan are still under reevaluation by the Master Plan Committee. The new ground water and nitrate report is still being digested in consideration of the direction the Township wishes to proceed with respect to increasing ratables. He continued to

add that in the 1994 Master Plan report there was much more research into the geology of certain areas of the Township, which also addressed how specific areas are more affected by the Nitrate Dilution than other areas. The current Master Plan Committee is considering areas of more restrictive development to less restrictive development and to consider rezoning that would least affect the geology and environment.

Ms. DeMeo referred to the report from 1994 and requested that Mr. Szczepanski comment on the magnanimous difference in the ground water availability between the two reports (2019 report). Mr. Szczepanski responded that as far as the ground water in relation to the Nitrate Dilution is concerned there is much more data that is now being collected with a more accurate way of collecting this data. There is more knowledge with regards to the frequency of severe storms. He went on to say that there is a lot that has changed over the course of time between when the data was collected in 1994 and the current data that was collected. Also, the land itself has changed quite a bit even if it is not necessarily development in Mendham Township but in surrounding areas where development has occurred. This affects what water is available in the ground and with the changes in land use over the last 26 years so has the effect this has had on ground water. Ms. DeMeo added that there has been more development over the years and that it seems counterintuitive to say that more development would offer more ground water resources. Mr. Szczepanski responded that even though there is more development that there is much more knowledge regarding water conservation technologies. Ms. DeMeo opined that there is not really a big effect from responsible water usage. Mr. Szczepanski responded that the data being collected has shown the available ground water different than it was. Other factors such as precipitation (storm events) is also a major factor in this change as well and that this is not just on a municipal scale but expands to the County level and beyond.

Mr. D'Emidio opined that it makes sense to wait until the completion of the Master Plan revisions, which is imminent. Mr. Baio, who is on the Master Plan Committee, stated that the Master Plan Committee discussions have been focused on maps and data to ensure the plan is capable of being presented. Mr. Baio questioned how after Lawrence Farmland was approved by the Board as a subdivision seventeen years ago has not yet been built out. Mr. D'Emidio responded that there has not been a market for ten-acre zoning. Mr. Baio also stated that Lawrence Farmland properties don't even pay taxes because each individual lot is farmland assessed.

Mr. Maglione opined that as a former builder he has listened to the pro environment side over the years, especially during the Highlands discussions. These groups always proffered that open land created more income for the town than developed land and that he could never reconcile the logic of these conclusions. He opined that developers who buy properties such as, for example, Lawrence Farmland with 10-acre zoning, are taking the entrepreneurial risk when buying such a property for development. He opined that the Board does not wish to be callous, but also cannot facilitate their success. Mr. Maglione stated that for the last ten years it was the European model that was the trend – it was the cities and not the suburbs where people wanted to live. This, of course, has changed whereby people are fleeing the cities and returning to the suburbs. As a result, he opined that there is nothing to say that people will not want 10-acre lots. Mr. Maglione went on to say that he is inclined to disagree with the change in zoning since it would not be fair to neighbors who built on a 10-acre zone and then have another neighbor subdivide his property after a zone change was made to the development lots whereby it would be now feasible to subdivide. He stated that if rezoning is allowed, especially with the time being spent on the Master Plan, that it sends a wrong message. He would not be in favor of endorsing something like this.

Chairman Giordano stated that the Township Committee is looking for a recommendation from the Planning Board regarding the rezoning requests from two developers. He opined that this is premature and that the Master Plan will be completed in two months.

Mr. Jeff Janota from H2M discussed the Master Plan completion schedule. He stated that there was a meeting last week with review of the housing element and that some of the giant mapping was finalized. There will be one last final meeting of the Master Plan Committee with a submission to the Planning Board by November 3, 2020 with the conclusions of their findings. It would then be presented to the Board at their November 17, 2020 meeting with how the zone requests fit into the overall goals of the Land Use Element along with other recommendations. The Master Plan would then potentially be heard at the public hearing on December 16, 2020 for adoption.

Mr. Buzak stated that the December 16, 2020 would have to be a special public noticed meeting given at least ten days prior to the public hearing on the amendments to the Master Plan with individual notices to certain entities, surrounding municipalities etc. The planning for the December meeting would have to start early in December to satisfy the noticing requirements for the December 16th hearing. Mr. Janota also said that the goal is to make the draft Master Plan available to the public as soon as the comments are received from the Planning Board at the November meeting. Mr. Monaghan requested a time line regarding the Master Plan presentation in an email. Chairman Giordano clarified that the Planning Board will be in receipt of the draft report in November with a presentation at the November 17, 2020 meeting whereby the Board would then have an opportunity to comment on the report with any changes or recommendations they may have. The public will also be present at this meeting. Mr. Janota would then incorporate the Board's comments into the report and have the revised report available to the public immediately. Mr. Janota stated that he would have a power point presentation highlighting the report and that he would be making the presentation. There was some discussion regarding the location of the meeting in November to be in compliance with COVID emergency regulations. The all-purpose room at the Middle School was suggested.

Mr. Buzak offered an important observation in terms of the manner in which this would all be accomplished. He stated that this is the Planning Board's Master Plan. The process that Mr. Janota outlined is intended to make it a document whereby the Planning Board can take ownership of the Master Plan document. Currently, it is the Planner's document and the subcommittee's document. It is not the Planning Board's document. He went on to say that it may well be that when the Planning Board reviews the document and it is presented on November 17th that the Planning Board is not prepared to move forward at that time and actually adopt it because of perhaps some deficiencies, concerns etc. This is a draft report, and typically draft reports are not disseminated to the public until it is made public. The public will have an adequate opportunity at the public hearing and before the public hearing to present comments on the report. Mr. Buzak emphasized that it should be recognized that this document has to be embraced by the Planning Board collectively first before it is presented to the public. He went on to say that he is somewhat concerned about the dissemination of draft reports before the Board has actually endorsed it. In conclusion, Mr. Buzak suggests that the Board consider the protocol whereby the Planning Board should have the draft document in advance so that the members can read and understand it and then attend the public presentation with the public on November 17. At that time the Board can make comments and recommendations and then decide at this point whether they are ready to move forward or not in December. Mr. Jaconta agreed with this.

Mr. Maglione brought up the composition of the Board in the new year with respect to how that could affect the Master Plan Report when it comes to a vote. There was some discussion regarding this issue, especially with regards to the Mayor who traditionally sits on the Planning Board. However, the Mayor can appoint a designee in his/her place, which is the current situation (Mayor Neibart appointed Mr. Monaghan as designee). Mr. Buzak stated that this is certainly something that the Board should consider.

Chairman Giordano stated that the revised Master Plan will be much more up-to-date and will most likely allow for the consideration of modifications to the zoning elements which will then be more in line with the direction and goals of the applicants and the Township.

Mr. D'Emidio opined that he liked the fact that the Township Committee conducted their meeting at the Middle School to inform the public of the police station potential construction project.

Chairman Giordano read his recommendation to the Township Committee for the Board's consideration.

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

Ms. Diana Orban-Brown of Ironia Road approached the microphone. She commented that the Middle School meeting worked for the people who were in the meeting but for those who had to ask questions by Zoom it was not effective at all. Even the acoustics for those in the room was a problem. There was some discussion as to why the multi-purpose room was chosen in the Middle School for the meeting.

Ms. Orban-Brown asked whether the changes from the old Master Plan will be indicated (redlined version) clearly on the proposed new Master Plan. Mr. Jonato stated that this is not typically done. However, he explained that what is typically done is if there are recommendations or goals and objectives being carried forward that these will be bolded and highlighted. The goal is to start from a fresh perspective on the Land Use Element and not use the old version as a template at all. Chairman Giordano clarified, therefore, that if the Board and public see something bolded then this means that it is the same verbiage that was utilized in the prior Master Plan. If it is not bolded then it is new verbiage and new material. Chairman Giordano suggested that in Mr. Jonato's actual presentation that he differentiate verbally on a point of what was done in the last Master Plan and what is being done now. He suggested any specific highlighting of any significant changes be communicated to the Planning Board and to the public. Mr. Jonato stated that he'll have a slide discussing significant changes.

Ms. Orban-Brown stated that the reason these zoning requests are on the Planning Board agenda is because these requests were made to the Township Committee. She said that she is not sure when or how this happened since she does try to attend all of the Township Committee meetings. Mr. D'Emidio stated that there were letters from the applicants to the Township Committee requesting a zoning change, and Chairman Giordano clarified that the Township Committee usually in matters of land use refers the requests to the Planning Board because of the Board's expertise. It was clarified that the requests were never presented to the public. Mr. Baio clarified that two letters were written to the Mayor, and the Mayor in informal discussions brought it up to the Township Committee who then remanded it to the Planning Board.

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

Mr. Keenan commented that before March of 2021, the DEP is requiring that every municipality adopt a new stormwater management ordinance. This amends the State stormwater regulations that have been in place since 2004 and that it must be presented before the Planning Board. Chairman Giordano asked Mr. Keenan to loop Mr. Buzak into this requirement and asked if this is simply a mandate that the Board adopt these regulations or is there "wobble" room. Mr. Keenan responded that there is "wobble" room but only to make it more stringent. It cannot be made less stringent. In most cases municipalities accept the new requirements and adopt it. Mr. Buzak

added that this is also an amendment to the Master Plan so it may be a good idea to coordinate the Master Plan report and new stormwater regulations together. He stated that the new stormwater regulation is also implemented to the ordinances that the Township Committee will adopt.

Mr. Mayer asked if the new stormwater regulations will in any way effect where the Township is going with the new Land Use Plan. Mr. Keenan responded that it will curtail how the individual parcels are developed. There will be less big stormwater management basins with more smaller stormwater management basins around a property. It will change the way developers approach projects. However, from a re-evaluation of the Master Plan and rezoning point of view, he opined that it does not have a big effect on whether it is a 10-acre parcel or a 5-acre parcel. It's how the design will be implemented as part of that parcel of development. Mr. Keenan clarified that anytime there is a project that disturbs over one acre of land or creates over $\frac{1}{4}$ acre of new impervious will trigger the new stormwater regulations.

Chairman Giordano entertained a motion to adjourn the meeting at 8:36 pm. A motion was made, and it was seconded. All agreed.

Respectively Submitted,

Beth Foley
Planning Board Secretary