

**TOWNSHIP COMMITTEE
TOWNSHIP OF MENDHAM
REGULAR MEETING**

DATE: September 27, 2021
TIME: 7:30 PM
LOCATION: In-Person and remote Via Zoom

ROLL CALL

Mr. Baio	Present
Ms. Duarte	Present
Mr. Monaghan	Present
Mr. Orlins	Present
Mayor Neibart	Present

Also, present:

Mr. Jason Gabloff, Township Administrator
Mr. John Mills, Township Attorney
Ms. Maria Coppinger, Township Clerk

SALUTE TO THE FLAG – Led by Mayor Neibart

STATEMENT OF ADEQUATE NOTICE – Read by Mayor Neibart

Adequate Notice of this meeting of the Township Committee of the Township of Mendham was given as required by the Open Public Meetings Act as follows: Notice was given to the Observer Tribune and Daily Record on January 6, 2021. Notice was posted on the bulletin board in the township offices and notice was filed with the Township Clerk.

PRESENTATION

None

RECOGNIZING NEW MEMBERS

Lt. Kemp introduced the following members who have applied to the Brookside Engine Company No.1:

- Gregory Voyles, Junior Membership
- Louis Carratie, Junior Membership
- David Biunno, Senior Membership

COVID – 19 UPDATE

Mayor Neibart provided a Covid-19 update.

PROCLAMATIONS

In Appreciation of Madison Orlins and Chris Spinella for their Efforts on the Mendham Trails Project
Mayor Neibart presented the proclamations to Madison Orlins and Chris Spinella.

In Appreciation of Bill Moran and the Gardening Angels for their Work at the Historic Park at Pitney Farm
Mr. Monaghan presented the proclamation to Bill Moran and the Gardening Angels.

ANNOUNCEMENTS

Mayor Neibart and Ms. Duarte announced several upcoming events that will take place in the township.

OPEN TO THE PUBLIC

Ms. Duarte made a motion to open the meeting to the public; seconded by Mr. Baio.

George Koenig – 13 North Gate Road – Mr. Koenig spoke on the noise ordinance, noting that previous cases prove the courts can enforce nuisance ordinances. He suggested that the township introduce a nuisance ordinance, a model DEP ordinance, or just a nuisance ordinance. Mr. Koenig asked about the permit process in the township. He suggested that the farm ordinance be updated to reflect the township committee's responses in the survey sent to the Morris County Agriculture Board.

Peter Banos - 47 Ironia Road, Mendham Borough – Mr. Banos asked for an update on the nuisance/noise ordinance and volunteered to sit on the review board. He asked that the committee continue to keep Mendham Township residential.

Barrett Kolton – 3 North Gate Road – Mr. Kolton spoke on the Backer Farm proposed brewery and the concert on September 11th. He asked the township committee to consider the noise ordinance and noted that the brewery (commercial) should not be permitted in a residential area.

David and Melissa Rainis - 290 Mountainside Road, Mendham Borough – They are very concerned with what is being proposed at Backer Farm. The noise ordinance and limiting the operation would be in the best interest of the Township, Borough, and nearby residents.

Mr. Orlins made a motion to close the public comment section of the meeting; seconded by Ms. Duarte

APPROVAL OF MEETING MINUTES

- Special, Regular and Executive Meeting Minutes of April 14, 2021

TOWNSHIP COMMITTEE	MOTION	SECOND	MOTION TO CALL THE QUESTION	SECOND	ROLL CALL		
					YES	NO	ABSTAIN
Mr. Baio	X			X	X		
Ms. Duarte		X	X		X		
Mr. Monaghan					X		
Mr. Orlins					X		
Mayor Neibart					X		

RESOLUTIONS – CONSENT AGENDA

- 2021-195

Resolution of the Township Committee of the Township of Mendham Authorizing Sale of Equipment and Vehicles
- 2021-196

Resolution of the Township Committee of the Township of Mendham Authorizing Refund of Overpayment of Taxes due to New Jersey State Tax Court Judgment
- 2021-197

Resolution of the Township Committee of the Township of Mendham Authorizing the Renewal of a Shared Service Agreement with the Township of Randolph for Animal Shelter Services
- 2021-198

Resolution of the Township Committee of the Township of Mendham Authorizing Membership with the Morris County Cooperative Pricing Council (MCCPC) for use of the MCCPC contracts that have been Bid in Accordance with P.L. 2011 C. 139

CONSENT AGENDA RESOLUTIONS NOS. 2021-195 THROUGH 2021-198							
TOWNSHIP COMMITTEE	MOTION	SECOND	MOTION TO CALL THE QUESTION	SECOND	ROLL CALL		
					YES	NO	ABSTAIN
Mr. Baio					X		
Ms. Duarte		X	X		X		
Mr. Monaghan					X		
Mr. Orlins	X			X	X		
Mayor Neibart					X		

RESOLUTIONS - REGULAR AGENDA

- 2021-199

Resolution of the Township Committee of the Township of Mendham Awarding Campbell Foundry Company through the State Contract #T0148 for Catch Basin Castings, Inlets and Manholes Not to Exceed \$35,000

TOWNSHIP COMMITTEE	MOTION	SECOND	MOTION TO CALL THE QUESTION	SECOND	ROLL CALL		
					YES	NO	ABSTAIN
Mr. Baio		X		X	X		
Ms. Duarte					X		
Mr. Monaghan					X		
Mr. Orlins	X		X		X		
Mayor Neibart					X		

- 2021-200

Resolution of the Township Committee of the Township of Mendham Authorizing the Award of a Non-Fair and Open Goods and Services Contract without Competitive Bidding to GM Fence of Roseland, New Jersey for the Replacement of the Fence at Pitney Park

TOWNSHIP COMMITTEE	MOTION	SECOND	MOTION TO CALL THE QUESTION	SECOND	ROLL CALL		
					YES	NO	ABSTAIN
Mr. Baio					X		
Ms. Duarte		X			X		
Mr. Monaghan				X	X		
Mr. Orlins	X		X		X		
Mayor Neibart					X		

- 2021-201

Resolution of the Township Committee of the Township of Mendham Authorizing the Payment of Bills

TOWNSHIP COMMITTEE	MOTION	SECOND	MOTION TO CALL THE QUESTION	SECOND	ROLL CALL		
					YES	NO	ABSTAIN
Mr. Baio			X		X		
Ms. Duarte		X		X	X		
Mr. Monaghan					X		
Mr. Orlins	X				X		
Mayor Neibart					X		

- 2021-202

Resolution of the Township Committee of the Township of Mendham Appointing Student Representatives to the Environmental Commission, Parks and Recreation Advisory Committee and Historic Preservation Committee

TOWNSHIP COMMITTEE	MOTION	SECOND	MOTION TO CALL THE QUESTION	SECOND	ROLL CALL		
					YES	NO	ABSTAIN
Mr. Baio	X			X	X		
Ms. Duarte		X			X		

Mr. Monaghan					X		
Mr. Orlins			X		X		
Mayor Neibart					X		

ORDINANCE(S)

None

For informational purposes only: The second reading and public hearing for Ordinance 15-2021 is scheduled for October 13, 2021. An Ordinance of the Township Committee of the Township of Mendham for a Change in Zoning for Block 147, Lots 42.01 - 42.16 From R-10 To R-5

OPEN TO THE PUBLIC

Ms. Duarte made a motion to open meeting to the public; seconded by Mr. Monaghan.

Motion made and seconded for recess of five minutes due to internet problems.

Terrill Doyle – 5 Cross Way – Ms. Doyle read two letters which are attached hereto.

Stephen Wayne – 71 Ironia Road, Mendham Borough – Mr. Wayne expressed that the concert at Backer on September 11th was very loud. He is astonished that the township committee would even consider the proposal. He was moved by Ms. Doyle’s letters.

Kim Hart – 17 North Gate Road – Ms. Hart commented on the noise level at Backer Farm during their September 11th concert, noting that it was very loud. Ms. Hart urged the committee members to remember their responses to the Morris Agricultural Board when considering a proposal such as the Brewery Proposal.

Vicky Wayne – 71 Ironia Road – agreed with Ms. Doyle’s remarks on the Backer Farm concert.

Mr. Orlins made a motion to close the open to the public; seconded by Ms. Duarte.

DISCUSSION

Mayor Neibart addressed some of the questions. She noted that the Township Attorney is working on the ordinance with the Police Department. She clarified that the Back Farm Brewery Proposal does not come in front of the Township Committee; it’s currently in front of the Planning Board. Ms. Duarte asked if a local advisory agriculture board should be looked into, as per the resident’s suggestion.

Mr. Monaghan wanted feedback on what ordinances are on file regarding private parties. The Township Committee engaged in a discussion regarding the current noise ordinance and the proposed noise ordinance.

Ms. Duarte suggested a public meeting to address the recommendations from the Master Plan.

LIAISON REPORTS

Members of the Township Committee provided their liaison reports.

ADJOURN

Motion to adjourn made by Mr. Monaghan, Seconded by Ms. Duarte.

Meeting adjourned at 9:24 PM.

Respectfully submitted,

Distributed: 04/01/2022
Approved: 04/11/2022

Maria F. Coppinger
Township Clerk

ATTACHMENT(S)

Terrill Doyle, 5 Cross Way (2)

Ms. Doyle read the following letters into the record.

Dear Committee Members,

At the September 13 Mendham Township Committee Meeting, I was one of many citizens who asked the Township about the loud concert that was held at the Backer's farm the previous Saturday. As was discussed at the Committee Meeting, the police received so many complaints about the noise that they did not even record the names and addresses of some of the residents complaining.

The Saturday, September 11 rock concert featured three different bands. I understand that many hundreds of people paid \$20 admission and, per Backer advertisements and social media posts, brought their own booze and chairs to sit on the farm property and drink all afternoon and into the evening. A food truck sold hamburgers and hot dogs. The music was so loud it was heard up and down Ironia Road and into surrounding neighborhoods.

Despite many complaints, the noise continued for six hours and no enforcement action was ever taken against the Backers.

If I had done that on my property, I believe that the noise would have been shut down within minutes and any paying attendees possibly arrested for violating public drinking and open container laws. I would have been cited and fined for a zoning violation for charging admission for a concert in a residential zone.

Why didn't that happen to the Backers?

To answer that question, I reached out to Katherine Coyle, Director of the Morris County Agriculture Development Board ("CADB"). Her reaction? She did not realize that the police did not enforce applicable local laws against the concert.

She explained that the Backers are **not** exempt from enforcement merely because they have a preserved farm. The Right to Farm Act protects the Backers for this kind of huge event only when the Backers file for and are granted a special permit under Agriculture Board regulations. They did not file for any such permit. And the Township apparently did not ask for or require one. So the concert, per the CADB, was not protected under Right to Farm laws.

Even if Backer Farm had filed for a permit under Right to Farm, they would still be subject to local regulation for noise and public drinking. The noise exemption for preserved farms only applies to agricultural activities such as tractor use. Not to music. And the question of public drinking is also a local law enforcement matter, not a Right to Farm issue. This is according to the County Board charged with overseeing preserved farms and administering the Right to Farm Act.

So why is Backer Farm flouting our laws? And more importantly, why is the Township letting them?

The Backers' insistence on ignoring laws that apply to them both breaks trust with the broader community, and raises questions about their compliance with any reasonable limits in the future.

I would appreciate timely answers to these questions.

Thanks.

Terrill Doyle
5 Cross Way
Mendham NJ

Dear Township Committee Members,

I want you to know that the Backer Farm has just publicly announced in a new website that it, and its proposed brewery, do not intend to ever follow Mendham Municipal Ordinances.

At the July hearing on their brewery application, the Backers' lawyer stated that the Backers only need to comply with state noise limits, which are a very loud 65 decibels. The lawyer stated they would ignore more restrictive local noise ordinances. I thought that this statement was an astonishingly brazen overreach that would certainly fail when cooler and more knowledgeable heads prevailed. That did not happen.

Instead, the Backers just reiterated their "above the law" position very publicly. This is what they said in a statement released yesterday on their new website:

Backer Farm intends to comply with the NJDEP noise standards and has retained an acoustical engineer to measure noise levels and assist in planning to **ensure compliance with legal noise limits**.

So Backers intend to follow only NJDEP limits. And ignore local laws.

As I explained in great detail in my September 22 email, this is wrong. According to the Morris County Agriculture Development Board's Katherine Coyle, the Backer farm is subject to municipal regulations, including regulations for noise. But Backers still claim they need only comply with state NJDEP maximum levels and can thus blast noise levels at 64.9 decibels until 10 at night, every night.

Given the Backer's publicly stated intent to ignore Mendham's laws now and in the future, I respectfully urge the Township to immediately do the following:

First, The Township needs to get on the same page as the Morris County Agriculture Development Board and shut down this aggressive, unsubstantiated, and arrogant interpretation of the law. According to the The Ag Board, the expert that regulates farms, local laws **do** absolutely apply to Backer Farm and the Brewery. At a minimum, the Township needs to talk to both the Ag Board and the Backers. And if Backers continue to defy local laws that are designed to protect all residents, not just farmers, the Township should file for mediation or disciplinary action against the Backers before the Ag Board.

Second, the Township needs to enforce existing laws against the Backers for the September 11 concert that interfered with many neighbors' right to peace and quiet on their properties, especially on a solemn day of remembrance. Failure to do so sends the message that the Township agrees that the Backers are in fact above the law.

Third, the Township should suspend further action on the Backer's pending Brewery application until the Backers can show good faith compliance with all local laws.

Why is the Planning Board even considering an application from applicants who have not only already broken the rules, but have now twice publicly declared that they intend to continue to ignore those rules forever?

If the Backers brazenly ignore rules during the approval process, what could possibly limit them once the approvals are granted?

In addition to violating noise and other local public safety laws on September 11, The Backers also are in violation of a driveway variance as noted in the Township engineer's report dated June 28. Backers apparently proceeded with construction without proper approval. Has this been fixed in the last three months?

These are the most obvious violations, but there may be many more that need investigating. As just one example, they seem to be in violation of zoning rules regarding storing trucks on their property.

In addition, the Backer's public website also makes many other questionable claims that may not be true -- has septic been approved by "local" authorities when in fact their application is still pending before the Planning Board? -- and may not be based on law. Those many issues are beyond the scope of this letter, but should be vetted by the Township, the Township's attorney, and the Planning Board.

I am trying to protect our neighborhood from a shocking overreach by the Backers that will destroy the peaceful enjoyment of our homes. But the Backers' neighbors shouldn't have to do this alone: the Township needs to step up and do their job.

Please let me know what further action you intend to take and if you need further help from me.

Thanks,

Terrill Doyle