

**TOWNSHIP OF MENDHAM
BOARD OF ADJUSTMENT
MINUTES
January 13, 2022
REORGANIZATION MEETING**

CALL TO ORDER

Ms. Foley called the meeting to order at 7:36 pm via zoom.

ADEQUATE NOTICE

“ADEQUATE NOTICE of this meeting of the Board of Adjustment of the Township of Mendham was given as required by the Open Public Meetings Act as follows: notice was given to the DAILY RECORD and the OBSERVER TRIBUNE, notice was posted on the bulletin board in Township Hall, and notice was filed with the Township Clerk on January 15, 2020.”

OATHS OF OFFICE

Mr. Sposaro administered the Oaths of Office to Mr. Richard Cadmus as Regular Member, Mr. Gary Kapner as Regular member, Mr. Frank Strafaci as Alternate 1 member and Mr. Nick Witczak as Alternate 2 member.

ROLL CALL

PRESENT Mr. Cadmus, Ms. Grant, Mr. Kapner, Mr. Lordi, Mr. Roghanchi, Mr. Strafaci, Mr. Witczak
ABSENT: Mr. Zairi, Mr. Peruyero

SALUTE TO THE FLAG: Led by Ms. Foley

CALL FOR NOMINATION OF CHAIRMAN (by Secretary)

Ms. Foley stated that she would accept nominations for Chairman of the Board of Adjustment for 2022. Mr. Arjan Roghanchi nominated himself for Chairman and stated that he was Vice Chairman in 2021. He stated that he's been on the Board for two years and has gained much experience. Mr. Lordi seconded his nomination. Ms. Foley accepted a motion to close nominations. A motion was made, and it was seconded.

Upon roll call:

AYES: Mr. Cadmus, Ms. Grant, Mr. Kapner, Mr. Lordi, Mr. Strafaci, Mr. Witczak

ABSTAIN: Mr. Roghanchi

Motion carried.

CALL FOR NOMINATION OF VICE CHAIRMAN

Chairman Roghanchi stated that he would accept nominations for roll of Vice Chairman of the Board of Adjustment for 2022. Mr. Lordi made a motion to nominate Mr. Kapner, and it was seconded by Chairman Roghanchi. A motion was made to close the nominations for Vice Chairman, and it was seconded. All agreed.

Upon roll call:

AYES: Mr. Cadmus, Ms. Grant, Mr. Lordi, Chairman Roghanchi, Mr. Strafaci, Mr. Witczak

ABSTAIN: Mr. Kapner

Motion carried.

Chairman Roghanchi opened up for discussion the reappointment of the Board's attorney, Mr. Anthony Sposaro. The members agreed that Mr. Sposaro should be reappointed since they were very satisfied with him as the Board attorney and find him quite capable and knowledgeable. Chairman Roghanchi entertained a motion to reappoint Mr. Anthony Sposaro as the Board of Adjustment attorney for 2022. Mr. Lordi made a motion to reappoint Mr. Sposaro, and it was seconded by Mr. Cadmus. Upon roll call:

Upon roll call:

AYES: Mr. Cadmus, Ms. Grant, Mr. Kapner, Mr. Lordi, Chairman Roghanchi, Mr. Strafaci, Mr. Witczak

ABSTAIN: None

Motion carried.

Chairman Roghanchi opened up for discussion the reappointment of the Board's Engineer, Mr. Denis Keenan of French and Parrello, Associates. The members agreed that Mr. Keenan was quite effective as the Board's engineer and were very satisfied with him. They fully supported his reappointment. A motion was made to reappoint Mr. Keenan, and it was seconded by Mr. Lordi.

Upon roll call:

AYES: Mr. Cadmus, Ms. Grant, Mr. Kapner, Mr. Lordi, Chairman Roghanchi, Mr. Strafaci, Mr. Witczak

ABSTAIN: None

Motion carried.

Chairman Roghanchi opened up for discussion the reappointment of the Board's Planner, Mr. Ryan Conklin of H2M Associates, Inc. A motion was made to reappoint Mr. Conklin, and it was seconded by Mr. Lordi.

Upon roll call:

AYES: Mr. Cadmus, Ms. Grant, Mr. Kapner, Mr. Lordi, Chairman Roghanchi, Mr. Strafaci, Mr. Witczak

ABSTAIN: None

Motion carried.

REORGANIZATION RESOLUTIONS

21-01 - OPEN PUBLIC MEETINGS ACT

21-02 - REGULAR MEETING SCHEDULE

21-03 - REAFFIRMATION OF RULES AND REGULATIONS

Chairman Roghanchi entertained a motion to approve the three Reorganization Resolutions. A motion was made, and it was seconded.

Upon roll call:

AYES: Mr. Cadmus, Ms. Grant, Mr. Kapner, Mr. Lordi, Chairman Roghanchi, Mr. Strafaci, Mr. Witczak

ABSTAIN: None

Motion carried

MINUTES – July 8, 2021 Regular Meeting

Chairman Roghanchi entertained a motion to approved the minutes of the July 8, 2021 Regular Meeting. A motion was made, and it was seconded.

Upon roll call:

AYES: Mr. Cadmus, Mr. Kapner, Mr. Lordi, Chairman Roghanchi

ABSTAIN: None

Motion carried.

SUCH MATTERS THAT RIGHTFULLY COME BEFORE THE BOARD

Chairman Roghanchi brought up for discussion the Board of Adjustment meetings continuing as virtual meetings along with the time change of the meetings from 7:30 pm to 7:00 pm. Mr. Sposaro stated that some of the Boards he appears before are virtual while others are meeting in person. There is no emergency declared by the Governor so the virtual meetings are not mandatory and that it would be up to the Board as to how they wish to conduct their meetings. After input from the Board members, it was decided that the Board of Adjustment meeting would remain virtual at least through February with a new time to begin the meetings of 7:00 pm. Chairman Roghanchi stated that he would consider the ability to conduct hybrid meetings in the near future.

Chairman Roghanchi entertained a motion to move the Board of Adjustment meetings for 2022 from 7:30 pm to 7:00 pm. A motion was made, and it was seconded.

Upon roll call:

AYES: Mr. Cadmus, Ms. Grant, Mr. Kapner, Mr. Lordi, Chairman Roghanchi, Mr. Strafaci, Mr. Witczak

ABSTAIN: None

Motion carried.

Chairman Roghanchi entertained a motion to amend Resolution 22-02 whereby the Board of Adjustment meetings will now begin at 7:00 pm instead of 7:30 pm. A motion was made, and it was seconded.

Upon roll call:

AYES: Mr. Cadmus, Ms. Grant, Mr. Kapner, Mr. Lordi, Chairman Roghanchi, Mr. Strafaci, Mr. Witczak

ABSTAIN: None

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

Ms. Susan Rubright, an Attorney with the law firm, Brach/Eichler, LLC stated that she represents Bernadette Koenig, George Koenig, Kimberly Hart and Eric Hart in connection with an application that was filed before the Board of Adjustment seeking an Interpretation of zoning ordinances pursuant to the municipal Land Use Law and also to the Township ordinances pertaining to the Backer Farm property. She wished to know if the Board received the Interpretation application, which was filed on September 14, 2021 (and duly noticed) and stated that the hearing on the application scheduled to take place on Thursday, November 11, 2021 was cancelled by the Chairman on Tuesday, November 9, 2021. Ms. Rubright stated that she prepared a letter that was sent to the Board on November 11, 2021 stating that the applicant has the right to be heard and that she was prepared to provide legal and planning arguments in support of the Interpretation application. Since that time, Ms. Rubright inquired as to when the application would be heard and has heard nothing back and would like to know when a hearing can be scheduled.

Ms. Rubright went on to say that she also asked Mr. Sposaro to consider for the Board's benefit as well as her clients' benefit whether his pro farm legal practice and stance as advertised on his website and elsewhere posed a conflict for him in hearing the Interpretation application. However, Mr. Sposaro offered no official decision by him regarding this issue. Ms. Rubright asked the Board to schedule a hearing on a mutually convenient date and that the Township cover the applicant's cost of Notice given since the application was not carried without need for further Notice but was abruptly cancelled.

Mr. Peter Banos of Ironia Road stated that he wished to echo Ms. Rubright's comments and support the Koenigs and Harts Application of Interpretation. He stated that opposition to the Backer Farm brewery is rising, and he opined that Mr. Sposaro should recuse himself from this application. He went on to opine that the Board should hire another attorney to hear this matter since Mr. Sposaro represents farmers, which is a clear conflict of interest. Mr. Banos went on to say that he has retained four consultants and that there are environmental and stormwater issues related to the Backer Farm brewery proposal. There is also an appeal before the DEP. Mr. Banos requested that the Board consider hearing the application since the applicants' have a right to be heard on this matter. He clarified for Chairman Roghanchi that he is not part of the Application for Interpretation that Ms. Rubright is representing but that he opposes the Backer Farm brewery plan vehemently.

Mr. George Koenig of 13 North Gate Road stated he is opposed to the Backer Farm brewery and that he is represented by Ms. Rubright and hopes that the Board of Adjustment will hear the Application of Interpretation. He opined that Morris County Agricultural Board cannot really interpret the Mendham Township Land Use Laws and Regulations as well as the Board of Adjustment can interpret the Township Zoning regulations. Mr. Koenig went on to say that he strongly encourages the Board to hear this case so that the residents can better understand whether Mendham Township is open to agritourism. Mendham Township recently responded a few months ago to the Morris County Agricultural Board questionnaire submitted to Mendham Township, and it was specifically noted that the Township does not want to engage in agritourism. Mr. Koenig opined that agritourism is fine on a certain size and scale but that 78 seats in a 10-acre zone is not appropriate. This is much too high a number of seats for a residential street.

Ms. Kim Hart of 13 North Gate Road stated that Ms. Rubright represents she and her husband Eric as well and that they were prepared to be heard in November, 2021 with the Application Of Interpretation that was filed to the Board of Adjustment. She expressed her dismay when there was no response with regards to their request that the application proceed and a hearing be scheduled as soon as possible. She opined that they have been held to a different standard than the Backer Farm applicant who has had the opportunities to be heard. Ms. Hart requested that this matter be scheduled for a hearing by the Board of Adjustment as soon as possible.

Ms. Hart addressed the official Mendham Township response to the Morris County Farmland Preservation questionnaire, which was filed on July 6, 2021 by Mr. Bob Casey, the Township Interim Administrator at the time. She read the response into the record and will be part of the record and minutes.

Chairman Roghanchi entertained a motion to close the public portion of the meeting. A motion was made, and it was seconded.

Upon roll call:

AYES: Mr. Cadmus, Ms. Grant, Mr. Kapner, Mr. Lordi, Chairman Roghanchi, Mr. Strafacci, Mr. Witczak

ABSTAIN: None

Chairman Roghanchi stated that the Zoning regulations are posted on the Mendham Township website. Mr. Sposaro stated that there is a request for an Interpretation before the Board of Adjustment and that it is not an application for development. The Board of Adjustment has the statutory power under the Land Use Act to interpret the Zoning Ordinance and requests can be made to do this. Mr. Sposaro went on to say that the matter before the Board is properly filed.

Mr. Sposaro addressed the conflict-of-interest issue that was raised by several members of the public with regards to Mr. Sposaro's involvement as the attorney for the Board of Adjustment when this application is heard. He went on to say that he has had several conversations with Ms. Rubright regarding this matter and that he told her that he did not feel there was a conflict so she has been aware of this for quite some time. Mr. Sposaro explained that conflicts of interest for him as an attorney are governed by the Rules of Professional Conduct for attorneys and also by the Local Government Ethics Law and went on to describe the criteria used to determine whether someone has a conflict of interest. He stated that the Board is being asked to interpret the municipal ordinance and that his practice, which focuses significantly on Right to Farm Act matters, would impair his objectivity or create an appearance of impropriety.

Chairman Roghanchi opened up the discussion to the Board members for their input. Mr. Sposaro clarified for Mr. Kapner that the Board has the exclusive jurisdiction to consider requests for Interpretations of the Zoning Ordinance. This is the Board's statutory function and obligation to do so. The Planning Board in concert with considering an application certainly has the right to interpret the Zoning Ordinance and that the Governing Body does not hear applications to interpret the ordinances. Mr. Sposaro also clarified for Mr. Cadmus that unlike applications for development that are submitted to the Board where there is a time limit within which the Board must take action, the Land Use Act is silent on when a Zoning Board must hear the request for the Interpretation. Mr. Sposaro stated that all the correspondence that has been received from Ms. Rubright, from members of the public and from Counsel for the Backers should be gathered and that everyone should work off of the same documents at the same time. Chairman Roghanchi stated that Mr. Sposaro clarified that the Interpretative request is filed properly before the Board and that the Board has absolute jurisdiction to hear the Interpretation. He has no comment with regards to an application for Backer Farm before the Morris County Agricultural Board and that the Board of Adjustment of Mendham Township retains the prerogative to decide matters relative to our own ordinance. Chairman Roghanchi opined that the Interpretive request be heard and that all documents in connection with the request be gathered and disseminated to all Board members as one packet. Mr. Sposaro confirmed that notice for a public hearing needs to be published and provided no less than ten days prior to the hearing. However, he went on to say that he has never heard of a Board agreeing to reimburse an applicant for the charges incurred for noticing a meeting that was cancelled. This is not the Board's responsibility. It's unfortunate, but it is not uncommon for meetings to be cancelled.

Mr. Sposaro stated that the requestors of the Interpretation have the obligation to notice according to the law.

Mr. Kapner suggested that Ms. Rubright summarize what documents she would like the Board members to have for the Interpretation. Ms. Rubright stated that she can certainly provide all the materials that were submitted to ensure that there is nothing missing, especially since there are new Board members. She went on to say that she does need to check the availability of her Planner for the February meeting and will let Ms. Foley know. Mr. Sposaro clarified for Mr. Lordi that as the Board attorney he can offer his opinion as to what the ordinance permits and does not permit. He went on to say that he wishes everyone to understand that this is not going to be an application on Backer Farm and that the request for an Interpretation is to determine whether the Backer Farm proposal is permitted or not permitted. The request strictly refers to what the ordinance permits.

Chairman Roghanchi entertained a motion to hear a request for an Interpretation on the Zoning Ordinance at a February or March meeting with the requestor publishing notice for the hearing along with the submission of any related materials the requestor submits to the Board members for the Request for the Interpretation of the Zoning Ordinance. There is no granting of relief or not granting of relief on the zoning ordinance. A motion was made by Mr. Lordi, and it was seconded by Mr. Cadmus.

Upon roll call:

AYES: Mr. Cadmus, Mr. Kapner, Mr. Lordi, Chairman Roghanchi, Mr. Strafaci, Mr. Witczak
ABSTAIN: Ms. Grant

Motion carried.

Mr. Sposaro stated that he has a conflict with the Board of Adjustment meetings going forward in 2022 for the next few months since he is representing another huge application in Chester Borough. He went on to say that if the Board wants him at this particular meeting for an Interpretation that there is a good chance that he would not be available on February 10, 2022. Ms. Rubright stated that a Special Meeting could be considered once she finds out when her Planner is available.

Chairman Roghanchi entertained a motion to adjourn. A motion was made, and it was seconded. All agreed.

The meeting was duly adjourned at 8:43 pm.

Respectfully submitted,

Beth Foley
Board Secretary