

**MINUTES OF A REGULAR MEETING OF THE PLANNING BOARD  
OF THE BOROUGH OF MOUNTAIN LAKES**

November 19, 2015

Chair Jim Bailey read the Open Public Meeting Advertisement Notice adopted at the annual meeting on January 29, 2015: Adequate notice of this meeting was given to the Citizen and the Daily Record, filed with the Borough Clerk, posted on the Bulletin Board in the Borough Hall on February 02, 2015 and made available to all those requesting individual notice and paying the required fee.

Meeting start: 7:32 pm

**ROLL CALL:**

Members Present: Bailey, Kane, DeVenezia, Nachshen, McWilliams, Horan, Russo and Holmberg

Absent: Dagger, Sheola, and DuTertre

Also Present: Attorney, Peter Henry and Planner, Paul Phillips

**INTRODUCTION TO THE ORDINANCE REVIEW PROCESS:**

Before the meeting was opened to the public Martin Kane made a statement pertaining to Ordinance 12-15. He said this evening was not a public hearing on the development of the property known as “King of Kings” but rather a review of the Ordinance establishing the new RAH -2 (Affordable Housing) zone on said property. The Ordinance was determined to be inconsistent with the Master Plan and the Board can make recommendations back to the governing body concerning the Land Use Ordinance. The Council’s public hearing will be held on Monday Nov 23<sup>rd</sup>. He requested the public only speak if they had something new to add. And in the interest of addressing possible misconceptions the Ordinance was written by Paul Philips, the Planner for the Board. The Mayor, Doug McWilliams, added that any comments on the Ordinance should not include discussions about the availability of water, the effect the development would have on our schools or our affordable housing obligation. These items will be discussed at the time the development application is heard.

**PUBLIC COMMENT:**

Sandy Batty, 15 Lockley Court, felt there should have been input from the Planning Board on the creation of the Ordinance since there was input from the Developer. She also thought the site map, done by Dykstra Walker for the developer, attached to the Ordinance should have been done by the Borough’s Engineer Bill Ryden. Debra Lawlor, Land Use and Environmental Planner, represented the Concerned Citizens of Mountain Lakes. She stated the Board had the ability to comment on anything in the Ordinance. Her client was not saying the property should not be developed however they felt the Board should consider the neighborhood, environmental impact, trees, slopes, run off, and the 20% affordable housing obligation when reviewing the Ordinance. The development plan has not been made public. COAH allows you to consider steep slopes when doing an affordable housing plan. Don’t be threatened by a potential law suit. She recommends looking at the R-3 zone when considering the rezoning of this property and make multifamily dwellings a conditional use. Ellen Emr, owner of 19 Sherwood Road, stated COAH second round certification could be used to judge today’s development of

the King of King property. In the second round COAH granted the Borough's vacant land calculations and gave them an exemption for building on steep slopes of 15% or more. It identified the King of Kings property as having steep slopes and only a portion of the property (now 3.32 acres) to be buildable. It established an overlay zone and assigned the Borough 18 affordable housing units. She felt this development plan would hurt the Borough's 2<sup>nd</sup> round agreement with COAH. Steve Arnold, 4 Craven Road, agreed with the comments in the letter from the Concerned Citizens of Mt. Lakes but objected to their Planner's suggestion to consider multifamily units. He did not think a new Ordinance was required and thought the current Ordinance could be modified to include townhomes as a conditional use in the RC-1 zone. He thought a topographical map of the Borough should be added to the Ordinance. Jim Hyson, of 2 Littlewood Court, said at the last meeting the Board spent a lot of time discussing variances and not wanting to get backed into a corner. He asked that they think through how they would handle these variances when making their comments to Council. Dick Samson, 142 Morris Ave, stated the United Nations just published 17 Sustainable Development Goals and thought our community should contemplate these goals when planning. He especially thought we should consider four goals pertaining to water and sanitation, inclusivity and safety, climate change and managing forests. Our Borough could be a model for implementing these goals. Debra Lawlor wished to clarify her statement multifamily structures could be built to look like townhomes and be listed as a conditional use. George Jackson, of 20 Sherwood Drive, thought this was an important decision for the Board. He asked them to complete the affordable housing plan. He thought the property should be developed using conventional clustering or housing similar to RC-3 zone. Lynda Hyson, of 2 Littlewood Court, said the Legacy project at the corner of Fanny and Morris should not be the role model for Mountain Lakes. Joydeep Mutsuddi, of 80 Pollard Road, was new to Mountain Lakes and came to the meeting at the request of his son. He extended an invitation to anyone who wished to walk with his son in the forest and look at the land.

**REVIEW OF MINUTES:** Martin Kane made a motion to adopt the minutes of the October 22<sup>nd</sup> meeting. Doug McWilliams provided the second; the minutes were approved by voice vote of all eligible voters.

**RESOLUTIONS:** none

**PUBLIC HEARING:** none

COMMITTEE REPORTS – none

OTHER MATTERS –

Ordinance 12-15 – Affordable Housing

Chairman Jim Bailey read Board member Tom Dagger's comments into the record since they had arrived too late for distribution. Mr. Dagger suggested Council model the Ordinance after the RC-3 zone, a concept plan be submitted by the developer for consideration when working on the Ordinance, and a subcommittee be formed to discuss alternate forms of the Ordinance then report back to the Board at our December Meeting. Nancy DuTertre's comments were available to both the Board and public 10 days prior to the meeting. Mr. Bailey then asked Board members to share their thoughts. Martin Kane reminded everyone of his comments at the last meeting, a threat of litigation

should not be a planning principle. He did not see how the Board could plan without an Affordable Housing element and they should not move forward with the Ordinance. Nick DeVenezia thought this ordinance was premature and the Board did not have enough information to proceed. Right now we are guessing at the affordable housing number and we should wait until we get it. Doug McWilliams felt the Board and Council did not have the luxury of waiting until the numbers were determined or the housing element was completed. Bethany Russo asked why the Board couldn't wait. We need to talk about schools and water. She had a problem with the difference in height calculation, fencing and slopes all which made it difficult to support the Ordinance. She concluded, too bad the Planning Board was not part of developing the Ordinance. Doug McWilliams answered water will be part of the development application. Peter Henry agreed water is discussed in the planning process not the Ordinance process and this Ordinance says nothing about water.

Peter Holmberg commented this Ordinance is working toward our affordable housing obligation. We are at a disadvantage because we don't have a third round filed with COAH. We are responsible for the past, present and future of Mountain Lakes. We don't want to be sitting here a generation from now looking at towers saying that wasn't a good gamble. We are putting ourselves at risk of losing control. Please do not throw this Ordinance out of hand, let's ask questions of our professionals, let's talk about it and make some meaningful recommendations back to Council. Doug McWilliams continued we have heard the Ordinance is too restrictive for the Board to work with so we are looking for suggestions on how we can make it less restrictive.

Martin Kane asked why did we have to create a new zone; were there no other zones that worked. There are so many exceptions made for this zone such as the height, slope changes, and fences. If we pick apart the Ordinance we are going to drive it back to an existing zone. Peter Holmberg said there had been a lot of discussion about the Ordinance having a 15% affordable housing requirement. It was done to reduce the density and still make the project financially viable for the developer. Paul Phillips added this is sales housing and we have 5.2 units per acre while the COAH minimum is 6 units per acre. Something had to give to create the balance. If you go to a 20% set aside you have to go to a different product such as stacked housing. I think townhouses are a more acceptable product and similar to what is already in the neighborhood. Paul Phillips said this Ordinance manages risk and was modeled after the existing R-AH zone. He did not know if the developer planned to file a builder's remedy law suit. But if they did a court appointed Master could determine the need for more affordable units than we have planned.

Corey Nachshen said he was in the middle on the Ordinance. He understood the risks and read many of the remedy suits filed throughout the state. As an Environmental Engineer for 25 years he understood the impacts environmentally. If a law suit was filed the decisions concerning this Ordinance would be out of our hands and will be handled by someone else. The end result would not look like any zone we have and we would not have any say in the results. I agree with Council to a point, we can tell them not to pass it or maybe we need to tweak it. Ultimately he felt it was better to work with this Ordinance then leave it up to someone else.

John Horan had many comments. The fences are a result of the actual development and should be eliminated from the Ordinance, the townhouses should be a conditional use, the improved coverage is 45% which is higher than any other zone and the frontage is 50 ft. while other zones are 100 ft. He felt the bulk requirements should be the same as the RC-

3 zone and thought this to be spot zoning. He wanted the height reduced and thought it should be measured like other zones. John Horan sensed all the changes listed in the Ordinance made it easier for the developer; actually reducing their burden of proof. He was looking at this from a planning perspective and thought the proposed Ordinance would strip the Board of their review process. He was concerned about the availability of water. If all the variances are removed with this Ordinance then the Board will have to grant the development plan and may never get to discuss the water issue as we did with the hotel project.

Mr. Holmberg asked Mr. Henry how the Borough could handle the risk of litigation. Peter Henry answered if the Borough gets into affordable housing litigation they will lose control since there is an overarching constitutional requirement for the town to provide it. During the normal application process you could reduce some of the bulk requirements requested and if you did not approve their development plan they could appeal. However you still could wind up in an affordable housing lawsuit. It is a balancing act because the developer needs so many salable units to subsidize the affordable units. You cannot avoid the affordable housing obligation the Borough has. John Horan added I would like to be given the opportunity to look at the project and ask questions about the water and schools. Doug McWilliams asked Paul Phillips to comment on how making the parcel part of the R-C3 zone would work. Mr. Phillips answered from an affordable housing perspective the R-C3 zone does not work because that zone does not have an affordable housing set aside. The density of RC-3 would not be enough to meet the affordable housing requirement.

Jim Bailey believed the Planning Board would like to have been involved from the beginning. He needed to see the financial analysis behind the 15% affordable housing set aside and questioned Section 1B of Ordinance 12-15. Mr. Phillips said the mention of "Use Regulations" (245-7B) was also referenced in zone R-AH and pertains to how all accessory structures would be handled. Mr. Bailey objected to footnote 1 of Section 1C, dwelling unit patios and overhead decks extending into the setbacks 10 ft. Mr. Phillips said this was done to reduce the effect on the sites steep slopes. Mr. Bailey asked about the COAH exemption from building in slopes in excess of 15%. Mr. Phillips explained in the 1<sup>st</sup> two rounds the Borough was granted a vacant land adjustment. The total vacant land was calculated and an applied density adjustment was made. But we no longer have that protection before COAH. If a lawsuit is filed the Master will determine the adjustment for steep slopes. He or she could remove all the steep slopes, some or none so there is some risk. This adjustment does not remove your requirement to provide your share of affordable housing. That is why the Borough did the 20% overlay zone to cover the unmet need in the previous rounds. Mr. Bailey asked about the slope categories within the building area listed in Section 1D. Paul Phillips had a slope map for the property, from experience he understood where the development would go and felt this chart provided the greatest slope protection on the property. Mr. Bailey wanted the table eliminated because he would want to discuss this at the hearing. He felt the measuring of the building height should be handled like all the other properties in the Borough. Lastly he added if we consider changing the Master Plan to support this Ordinance we would have to make changes in about 15 or 20 locations within the Land Use and the Community Characteristics elements.

Peter Henry agreed to read back the list of concerns Planning Board members had with the Ordinance. The first decision was to determine if the Ordinance should be rejected outright or Council be given suggested changes to the proposed Ordinance. John Horan

proposed the Board consider recommending the RC-1 zone be changed to the R-AH zone rather than create a new R-AH2 zone. Jim Bailey was not in support of rejecting the Ordinance but preferred to send them changes.

Peter Holmberg asked Mr. Phillips about the recommendation to change this property to the R-AH zone. Paul Phillips said this site was unique as was the property in the R-AH zone. Both affordable housing zones are spot zones and there is nothing wrong with that based on the facts and conditions of the property; every Mount Laurel zone is a spot zone. The suggested changes the Board is making are significant and would cause this Ordinance to be rejected resulting in the Council having to start all over. He pointed out this site has 50 ft. of frontage because that was the width of the access from Sherwood Road. Proposing we put the property in the RC-3 zone would not permit you to reach your affordable housing requirements.

Peter Henry boiled the comments down to the following 7 suggestions.

1. Eliminate permission for fences
2. Use height limitations and measurement techniques as in existing Ordinances
3. Reduce the allowable slope disturbance and better control
4. Examine water availability and demand issues
5. Examine the 15% and density elements
6. Consider conditional use rather than permitted use for housing types
7. Import bulk requirements which are realistic, but more restrictive with the developer addressing their particular needs by way of variance requests.

John Horan was still concerned with the bulk requirements. He thought they should consider making this zone similar to other zones we already have. He believed the town was creating zoning requirements for private interest. It was suggested #7 be amended to suggest that RC-1, RC-3 and AH-1 zone standards be considered when talking about bulk requirements. Board members agreed with this suggestion. Nick DeVenezia said we should move forward with these suggestions. By doing so we are asking the developer to reduce the number of units and still make the project work. The site is zoned for development it is not open space.

The Board voted 6 – 0 to recommend these seven (7) changes to Ordinance 12-15. Mr. McWilliams and Mr. Holmberg abstained from voting. Jim Bailey stated the Planning Board was willing to help revise the Ordinance in any way.

Jim Bailey adjourned the meeting at 9:58pm.

Respectfully submitted,

Cynthia Shaw, Secretary