

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

October 22, 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: 7:34 PM

ROLL CALL:

Members Present: Bailey, Kane, DeVenezia, Nachshen, Sheola, Dagger, McWilliams, Russo and DuTertre

Absent: Horan and Holmberg

Also Present: Attorney Peter Henry, Engineer Bill Ryden and Planner Paul Phillips

PUBLIC COMMENT:

Debra Lawlor, of Wayne, New Jersey, a licensed Planner in the state of New Jersey, was at the meeting representing the Concerned Citizens of Mountain Lakes. She said the Borough needed to take more time to review proposed Ordinance 12-15 based on the environmental conditions of the site. She felt they needed to continue the land development pattern already established in the town, make townhouses a conditional use in the RC-1 zone and develop this parcel the same as the RC-3 zone. Ms. Lawlor thought the community should look at the environmental and financial impact analysis now. She was not saying don't develop but rather obtain your information to make the right decisions now rather than later. Michael O'Krepky, a licensed Engineer in the state of NJ, of Sparta, New Jersey, was at the meeting representing the Concerned Citizens of Mountain Lakes. He felt the Borough was creating a development plan which required many variances. He recommended the town do a comprehensive build out analysis for the property then they could move forward with confidence and without environmental or zoning impact. Ellen Emr, the owner of 19 Sherwood Drive, pointed out potable water was mentioned many times in the Master Plan. The proposed hotel has received approval from the DEP for water allocation so there will be no water left for future projects. We are told this is the responsibility of the builder but it should be a concern of the Council and future Councils. Sandy Batty, of 15 Lockley Court, understood the Planning Board had received the memo from the Concerned Citizens of Mountain Lakes. Many areas of the proposed ordinance are inconsistent with the Master Plan. The 2013 Master Plan does not reference the King of Kings property since it was being considered for purchase as open space at the time of its adoption. She read from the 2008 Reexamination Report (Section D #14 b.) pertaining to the King of Kings property and the committee's recommendation for its future use. She is concerned about future lawsuits if the property were developed. Bill Theel, of 8 Center Drive, asked the Board not to open the door to low income housing. Once done it could wind up other places in town like on the lake. Steve Arnold, of 4 Craven Road, asked why the Council passed the Ordinance on to the Planning Board. He was concerned about the height of the townhomes. He felt the Ordinance was not consistent with the Master Plan and could be strengthened to support

it. Frank Kelleher, of 12 Robinhood Drive, felt the Planning Board was uninterested in the comments from the community. Mark Ronan, of 10 Sherwood Drive, asked what were the arguments supporting the development of this property or is this Ordinance about threats from the developer. George Jackson, of 20 Sherwood Drive, felt this was a historic decision for the town; no one would have proposed this Ordinance if there was not a threat of a lawsuit. The property is not part of the Route 46 corridor so it is not a redevelopment site. The Borough's overlay zone handles our affordable housing. Joan Nix, of 11 Hillcrest Road, was part of the committee that worked on the 2008 Reexamination Report. She felt there were more options for developing by clustering and thought affordable housing was important. She said changing the zone in the Midvale district to allow for mixed use would achieve this. The height calculation is different in the proposed Ordinance than the rest of the property in town. She was concerned about the extensions into the setback and the enormous lot coverage. Wilson Mitchell, of 37 Sherwood Drive, said he did not see the threat of a builders remedy and did not think affordable housing had to be include on this site. Jim Hyson, of 2 Littlewood Court, understood the Board needed to determine consistency of the Ordinance with the Master Plan and encouraged them to send something back to the Council as to why they thought it was inconsistent.

REVIEW OF MINUTES: Martin Kane made a motion to adopt the minutes of the September 24th meeting. Corey Nachshen provided the second; the minutes were approved by voice vote of all eligible voters.

RESOLUTIONS: none

PUBLIC HEARING: none

COMMITTEE REPORTS

Jim Bailey mentioned a group of citizens were meeting to work on Housing Element and Fair Share Plan. The members are from the committee that previously worked on the third round housing plan; their next meeting is on November 2nd. Council has hired a consultant to calculate the number of affordable housing units the Borough needs to build in order to meet their constitutional requirement. That number should be ready by the end of the year.

OTHER MATTERS

Ordinance 12-15 - Jim Bailey gave the floor to the Board's Planner, Paul Phillips. Mr. Phillips said the Board's charge was to identify if this Ordinance was consistent with the Master Plan, make recommendations about those inconsistencies if any and give to Council any additional comments they may deem appropriate. At a February Council meeting the developer approached the town about changing the zoning for the King of Kings property located in the RC-1 zone. The zone allows for the clustering of single family homes but does not change the density of the property. It is situated next to the RC-3 zone which allows for townhomes. Paul Phillips was asked by Council to consider the affordable housing issue in light of the developers plan and the characteristics of the property. He wanted to make it clear this was not the developer's Ordinance; he wrote it. The Borough is vulnerable to affordable housing litigation due to not petitioning for substantive certification of their 3rd round housing obligation. The Borough has a constitutional

obligation to provide their fair share of affordable housing and Ordinance 12-15 was created with this in mind. If the developer was to pursue the Boroughs unmet affordable housing needs with the courts the court would appoint a master (Planner) to review the situation. If this goes to the courts it is not an issue of whether but how much affordable housing the town would be required to provide; it is a real threat. This Ordinance is inconsistent and it is not unusual to amend Master Plans as situations change. It is my responsibility as your Planner to tell you the situation you are in. Peter Henry added the builders remedy risk is not just for this builder; the Borough is exposed to anyone wishing to file a lawsuit. Mr. Phillips continued, the Ordinance that is proposed by the governing body is trying to maintain as much control over the development as possible. In a lawsuit the courts could rule a need for 100 to 200 units rather than the 40 units proposed and the Planning Board needs to understand that exposure. This Ordinance establishing the R-AH2 zone tries to seek a balance.

Mr. Phillips said the Borough already has an affordable house zone (R-AH) and he modeled this affordable housing zone (R-AH2) after the existing one. This project would have 5.2 units per acre and the Legacy project has 5.5 per acre. The proposed affordable units are townhomes just like in the R-AH zone. The steep slopes are important to the governing body so they have incorporated something on slope disturbance in the Ordinance. Most of the slope disruption will occur where Sherwood Drive is extended and those slopes would be effected no matter what the development plan winds up being. The Borough's steep slope Ordinance is for single family lot construction and pertains only to the building envelope. If the developer goes to court there could be less protection of the steep slopes. The Ordinance calls for a 15% set aside for affordable housing rather than 20%. In his experience townhouse development are 6 to 8 units per acre with a 20% set aside for affordable housing. If you look back to the COAH 2nd round rules 6 sale housing units per acre or 10 rental units per acre were required. Mr. Phillips concluded if the Borough required the 20% affordable housing obligation the development would increase to 6 units per acre, rather than the 5.2 units proposed, increasing the total yield of the project, you would have to go from a townhouse product to a stacked flat arrangement and further intrusion on the sloped areas would be required.

Nick DeVenezia said this Ordinance was inconsistent with the Master Plan. What other variances would we have to look at when the Board sees the final plans? Paul Philips said he couldn't tell them that but the Board would handle the variances during the site plan review. Martin Kane asked if the Ordinance was passed by Council could the fair share housing groups' challenge only having these 6 units; yes they could. Paul Philips said there are many affordable housing numbers out there and the Borough can't do a full affordable housing plan without that number. Corey Nachshen asked when the number of units planned on the site becomes a safety issue. Peter Henry said that would be a site plan review issue where the fire chief would weigh in.

Tom Dagger asked what happens if the Planning Board determines the Ordinance inconsistent. Peter Henry answered the governing body must have a majority of the full Council approve the Ordinance and they have to give reasons why they are proceeding with its passing. Mr. Dagger continued we can't really determine some of this until we see the site plan and somethings in this Ordinance will not be part of the site plan decision process because they will already be determined. Peter Henry confirmed he was correct. Tom Dagger inquired about the height. Paul Phillips said some of particulars in the Ordinance, including patios in the setbacks, were done to protect the slopes. The height was determined similarly to the Legacy project and the elevations that face the lots

on Route 46 will be more than the required 35 feet due to the drop in grade. Mr. Dagger asked will the Board have a builder remedy suit hanging over their head during the site plan process. Mr. Henry answered yes they would, someone else could file suit but the Borough would be in a better position if they have passed this Ordinance and had provided some affordable housing as part of this development. Nancy DuTertre asked why we are looking at the Ordinance if we aren't going to say it's consistent with the Master Plan. Mr. Henry explained it was a requirement of the MLUL to have the Ordinance referred by the Council to the Planning Board for consistency. Nick DeVenezia asked why sections 245-15 N and P would not apply to this development plan. Paul Phillips said fencing and look alike buildings applied to single residential site plans and would not apply to townhome designs. Mr. Dagger asked how this Ordinance was the same as Legacy. Mr. Phillips said it was very much the same, the density was comparable, setbacks are different, the other site is flatter so the stories are 2.5 rather than 3 at this location and coverage is slightly greater.

Martin Kane made a motion proposing Ordinance 12-15 was inconsistent with the Master Plan and Tom Dagger provided the second. The motion was approved by a vote of 9 -0 with members Bailey, Kane, DeVenezia, Nachshen, Sheola, Dagger, McWilliams, Russo and DuTertre voting it inconsistent.

Martin Kane asked the following comments be added to the memorandum sent to the Council on the Ordinance's lack of consistency. In Element II, *Statement of Objectives, Principles, Assumptions, Policies and Standards*, of the Master Plan it states the dominant character of single family homes in Mountain Lakes should be maintained. In Element III, *Land Use Plan*, under the Land Use Policies for Residential Areas it states the remaining vacant areas are largely unsuitable for high density due to steep slopes and land acquisition should be considered.

Mayor Doug McWilliams said he wished to provide the background information on the new Ordinance from the governing body. Council understands this is the only property available to help meet some of our affordable housing needs. Ordinance 12-15 will provide some of those units, keeping the development as small as possible (40 units) and still be an economically viable project for the builder. The Council does not like the affordable housing number at 15% but understands if they required 20% they would have to increase the density and affect the slopes. We understand the need to have this Ordinance and a supportive Master Plan Element to avoid a builder's remedy suit. The Council is watching what is happening in Parsippany with the Waterview project. Parsippany's governing body did not approve their Ordinance to change the zone to accommodate 64 townhomes and retail space with a reasonable buffer and no entrance onto Intervale Road. They are currently experiencing a builder's remedy suit. The new proposal is for 100 affordable housing units, 440 market rate units, 10 ft. buffers, an access onto Intervale Road and it will still have a retail element. This Council wants to have a say in the development of this privately owned parcel. This developer has expressed a willingness to initiate a builder's remedy suit and if they don't there will be another builder who would be willing to do it.

Tom Dagger said he hated to see the development of this property and it was too bad the Borough couldn't purchase it. He was concerned the Planning Board hands would be tied as the Ordinance is written and thought it should be modified for more control by the Board. Doug McWilliams said the Council understands this Ordinance is inconsistent but were looking for feedback from the Planning Board on its contents and have extended the ability of the Board to respond to their November 19th meeting.

Nancy DuTertre stated Element VI, *Housing Element and Fair Share Plan*, is full of inconsistencies with this Ordinance so she thought we should wait until the element was rewritten. Peter Henry stated an Ordinance can be created that is inconsistent. Rich Sheola added the Housing and Fair Share Committee is meeting and our obligation is being determined but the Council would have to decide if they wanted to wait for this information before voting on the Ordinance. Martin Kane said the Ordinance was being considered due to litigation. He continued, there are other considerations that do not involve the Planning Board; it is the Council's role to determine if they will proceed. Peter Henry stated this Board needs to give feedback to the Council about their concerns on those things in the Ordinance they think would tie their hands. Council has to make a decision on this under some undesirable circumstances.

Jim Bailey shared his thoughts with the Board. He said before this Ordinance receives approval he felt the Council needed to do an environmental report and a site plan should be submitted for them to see. The MLUL states you can't zone until you have a housing element in place and he does not think we have one. The town engineer should do a review and a third party engineering firm should do an additional review of the project. He felt the Planning Board should do the Housing Element before the Ordinance was passed. He thought there should be a discussion with the Highlands Council to see how we could reduce our affordable housing numbers. The Council should employ others, as the League of Municipalities, to give the other side of the argument. In his opinion Mr. Hoffman's memo was prepared with a conclusion already made and was done by cherry picking references that suited his position. The MLUL requires the Master Plan to be reexamined periodically and referencing old Master Plans to support your argument did not work for him. Mr. Bailey said the Fusee property had an age restricted requirement that was removed. The census data shows little change in the senior population so there is no need for senior housing in Mountain Lakes. He recommended the Council confer with the Conservancy and the property owners about purchasing the property. Mr. Henry stated such a suggestion could lead to potential litigation about interference with the contract. Mr. Bailey was concerned everything about the development would be decided before the Planning Board saw the site plan.

The Board decided to carry the creation of the memo to the Council on the inconsistency of the Ordinance to the next meeting.

Jim Bailey adjourned the meeting at 9:43pm.

Respectfully submitted,

Cynthia Shaw, Secretary