

**BOROUGH OF MOUNTAIN LAKES**  
**MOUNTAIN LAKES HIGH SCHOOL, 96 POWERVILLE ROAD, MOUNTAIN LAKES**  
**973-334-3131**

[www.mtnlakes.org](http://www.mtnlakes.org)

**NOVEMBER 23, 2015**  
**7:00 PM EXECUTIVE SESSION**  
**8:00 PM PUBLIC SESSION**

**MINUTES**

**1. CALL TO ORDER; OPENING STATEMENT**

This meeting is being held in compliance with Public Law 1975, Chapter 231, Sections 4 and 13, as notice of this meeting as originally scheduled and the agenda thereof had been reported to The Citizen and the Morris County Daily Record and The Star Ledger on January 8, 2015 (change in location November 6, 2015) and posted in the municipal building.

Mayor McWilliams called the meeting to order at 7:30 p.m. in the high school auditorium.

**2. ROLL CALL**

Ms. Reilly called the roll. All Council members were present except for Councilman Albergo, who arrived at 7:36 p.m. Also present at the Executive Session were Borough Manager Rich Sheola, Borough Clerk Michele Reilly, Borough Attorney Robert Oostdyk and Borough Planner Paul Phillips.

**3. PLEDGE OF ALLEGIANCE**

Mayor McWilliams led the salute to the flag.

**4. EXECUTIVE SESSION**

**Resolution 181-15**

**Matters Relating to Litigation, Negotiations and the Attorney-Client Privilege**

-Potential Litigation Update, Conlan vs. Mountain Lakes et al

-Affordable Housing Litigation

Motion made by Councilman Lester, second by Councilman Barrett, to enter into Executive Session with all members in favor signifying by "Aye".

Motion made by Deputy Mayor Holmberg, second by Councilman Albergo, to adjourn the Executive Session and return to the public portion of the meeting with all members in favor signifying by "Aye".

**5. COMMUNITY ANNOUNCEMENTS**

Deputy Mayor Holmberg announced the first annual Volunteer Recognition Program to be held on December 14<sup>th</sup> at 6:30 p.m. in the High School lobby. He said the Council would be holding a reception to recognize and thank the Borough's many volunteers.

Mayor McWilliams reminded residents to check the website and mentioned the tree lighting and menorah lighting, to be held on December 5<sup>th</sup> and 6<sup>th</sup>, as well as the Town Club's holiday house tour.

Councilman Albergo talked about the new styrofoam recycling program in effect at the Department of Public Works.

Mayor McWilliams said the Borough Hall would be closed Thursday and Friday for Thanksgiving. Councilman Lester reminded those in attendance to take a moment and reflect on being thankful for all we have and mentioned those in other parts of the world that are not as fortunate.

Councilman Lester stated that he had recently represented the Borough at the New Jersey State League of Municipalities (NJSLOM) conference in Atlantic City and had the opportunity to attend some noteworthy seminars on communicated, finance, police issues and affordable housing. He said in reference to affordable housing, he wanted to remind everyone that the Mount Laurel decision dated back to 1973 and in the years since then there have been many changes to affordable housing which have caused expense and uncertainty for municipalities, not to mention those waiting for affordable housing.

Mayor McWilliams said he also attended the conference and was able to network with the Township of Parsippany Troy-Hills regarding opportunities for shared services and also spoke with the Department of Environmental Protection regarding Sunset Dam.

**6. SPECIAL PRESENTATIONS**

There were no special presentations.

**7. REPORTS OF BOROUGH ESTABLISHED BOARDS, COMMISSIONS AND COMMITTEES** **NONE**

**8. PUBLIC COMMENT**

**Please state your name and address for the record.** Each speaker is limited to one (1) comment of no more than five (5) minutes with no yielding of time to another person.

Mayor McWilliams opened the public comment portion of the meeting with the consent of the Council. Mayor McWilliams explained the Council's policy of limiting each speaker to five (5) minutes with no yielding of time to another person.

Fred Kanter – 81 Hanover Road

Mr. Kanter recommended the Council investigate fees associated with the Towing Ordinance and said he felt that operators charge more than is fair for towing and storage. He also spoke against the potential reappointment of the current Borough Engineer and Borough Attorney and said he demanded that the Council make good choices.

Sandy Batty – 15 Lockley Court

Ms. Batty said that correspondence had been sent to the Council on November 16<sup>th</sup> by the ad hoc Housing Committee. She said the group has been meeting since June and would appreciate Council direction regarding a charter and name for the committee. She read the correspondence which lists some suggestions from the ad hoc group including the appointment of some members of Council to sit on the committee, along with someone from the Environmental Commission.

With no one else wishing to be heard, Mayor McWilliams closed the public comment portion of the meeting.

Mayor McWilliams told Ms. Batty that the establishment of a Housing Committee would be discussed on December 14<sup>th</sup>.

Deputy Mayor Holmberg responded to Mr. Kanter and said he would review the towing issues. He stated that the Borough Manager and Council began the process of reviewing Borough professionals in August. He said that requests for proposals were solicited for each and every professional and that Mr. Sheola and the Personnel Subcommittee had completed an extensive and exhaustive analysis, considering many factors including cost, experience, and the needs of the Borough.

**9. DISCUSSION ITEMS** **NONE**

**10. ORDINANCE 12-15**

**ORDINANCE AMENDING CHAPTER 245 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF MOUNTAIN LAKES BY CREATING A NEW RESIDENTIAL-AFFORDABLE HOUSING 2 (R-AH2) ZONE**

**WHEREAS**, the Borough Council of the Borough of Mountain Lakes desires to create a realistic opportunity for the creation of affordable housing within the Borough; and

**WHEREAS**, the Borough Council has determined that there is very little vacant and developable land in the Borough suitable for affordable housing; and

**WHEREAS**, the Borough Council has determined that certain lands within the RC-1 Residential – Single Family Clustering Option Zone commonly referred to as Block 116, portion of Lot 3.01 are suited for inclusionary development; and

**WHEREAS**, said lands abut the RC-3 Residential Zone, where townhouses are permitted as a conditional use; and

**WHEREAS**, the Borough Council has determined that said lands are partially encumbered with slopes in excess of 15% and that limited disturbance of such slopes is necessary to foster development that provides an affordable housing set aside.

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Mountain Lakes in the County of Morris and the State of New Jersey that under Chapter 245, Zoning, of the General Code the Zoning Map be changed for Block 116, portion of Lot 3.01, as depicted on the attached Exhibit A, from RC-1 Residential Zone – Single Family Residential Clustering to R-AH2 Residential Zone – Affordable Housing 2 and that the following section be added:

**§ 245-9.1. Residential — Affordable Housing 2 (R-AH2) Zone.**

**Section 1.** The purpose of the R-AH2 Zone is to provide a realistic opportunity for the construction of affordable housing as part of a comprehensively planned housing development, in conformance with the regulations of this chapter governing affordable housing. In the R-AH2 Zone, the following uses shall be permitted:

- A. Permitted principal uses. Townhouses and multi-family dwellings in accordance with the provisions below and the development standards enumerated in Subsection C:
- (1) All of the market rate dwellings shall be townhouse units.
  - (2) Affordable dwellings may be either townhouse or multi-family units.
  - (3) Fifteen (15) percent of all dwelling units shall be set aside as affordable housing.
  - (4) Dwellings constructed for low- and moderate-income households shall be governed by deed restrictions ensuring long-term affordability controls in accordance with Article VI of this chapter.
  - (5) The development, unit distribution and marketing of all housing constructed for low- and moderate-income households shall be undertaken consistent with the rules and regulations of the New Jersey Council on Affordable Housing and the provisions of Article VI of this chapter, except that the construction of affordable housing shall be required to be undertaken upon completion and issuance of certificates of occupancy for fifty percent (50%) of the market rate units within the development.
- B. Permitted accessory uses. Same as in § 245-7B, except that all accessory structures shall be designed to serve or be developed in relation to the entire development and shall be subject to site plan approval.

C. Development standards.

<b>Type</b>	<b>Requirement</b>
Minimum tract size	7 acres
Minimum frontage on a public or private street or other right-of-way providing access to the tract	50 feet
Minimum setbacks (principal buildings) <sup>1</sup>	
From RC-3 zone boundary	50 feet
From any other tract boundary	25 feet
From internal access road	25 feet with sidewalks 22 feet without sidewalks
Minimum setbacks (accessory buildings)	Same as for principal buildings
Maximum height	3 stories/35 feet
Maximum density	5.5 dwelling units per gross acre; however in no event shall the total number of dwellings exceed 40.
Parking requirements	See N.J.A.C. 5:21-1.1 et seq. (Statewide Residential Site Improvement Standards) for total number of spaces to be provided. A minimum of one space per unit shall be provided in an enclosed garage for market rate units.
On-site rights-of-way (ROW) and pavement widths	See N.J.A.C. 5:21-1.1 et seq.
Maximum improved coverage	45%

<sup>1</sup> Dwelling unit patios, decks, elevated decks, appurtenances such as railings or stairs, privacy fencing, HVAC units and pedestrian entrance structures such as stairs, pads, roof overhangs, walkways, and railings shall be permitted to extend no more than 10 feet into any required minimum setback. No such area shall be enclosed except for overhead decks, pedestrian entrance roof overhangs and safety railings. Extensions into required minimum setbacks shall be effectively buffered by landscaping.

- D. Permitted slope disturbance. For the purpose of ensuring that there is sufficient area to reasonably accommodate the construction of townhouses/multi-family units while at the same time limit the level of disturbance within areas with slopes in excess of 15%, a proposed "building area" shall be depicted on the plans as part of the required submission. The proposed "building area" shall be inclusive of any proposed building as well as the area extending twenty (20) feet from the front of said building and ten (10) feet from the side and rear of said building. <sup>2</sup>

The maximum allowable disturbance within the "building area" shall be as follows (i.e., as a percentage of land area within the respective slope category)

<u>Slope Category</u>	<u>Maximum Allowable Disturbance</u>
0 - 14.99%	100%
15% - 24.99%	30%
25% - 34.99%	10%
35% or greater	5%

<sup>2</sup> § 245-20C. shall not apply to development in the R-AH2 Zone

- E. Homeowners' association. If a homeowners' association is formed, it shall be approved in the manner stipulated in § **245-16H(7)**.
- F. Affordable Housing 2 Zone shall be exempt from measuring to existing (original) grades as defined in Chapter **40**, § **40-3** under definitions for "Building height (residential zones)," "grade plane," and "story above grade." Measurements shall be from the first floor elevation at the front door entrance of each market rate or affordable townhouse unit to the mid-point of a sloped roof. If the affordable dwellings are multi-family units and not townhouses, then the measurement shall be from the average first floor elevation at the front of the building to the mid-point of a sloped roof.
- G. Affordable Housing 2 Zone shall be exempt from the "three-foot maximum change in average grade as measured along any wall of a building" requirement, as defined in Chapter **245** under Footnote 17 of Schedule I.
- H. Multiple principal buildings are permitted, except that no more than six units shall be permitted within any building. Buildings shall be separated from other buildings by a minimum of 50 feet, except that side to side orientations of buildings shall be separated a minimum of 25 feet and side to rear orientations of buildings shall be separated by a minimum of 40 feet.
- I. § **245-15.N** shall not apply to development in the R-AH2 Zone.
- J. § **245-15.P(2)** shall not apply to development in the R-AH2 Zone.

**Section 2.** If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

**Section 3.** All Ordinances or parts of Ordinances, which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

**Section 4.** This Ordinance shall take effect immediately after final passage and publication in the manner provided by law.

If adopted this Ordinance shall take effect after publication and passage as provided by law.

#### **PUBLIC HEARING**

Mayor McWilliams opened the public hearing on the Ordinance with the consent of the Council. Mayor McWilliams explained the Council's policy of limiting each speaker to five (5) minutes with no yielding of time to another person.

George Jackson – 20 Sherwood Drive

Mr. Jackson read an email he had sent to the Borough Council members regarding the Planning Board's determination of the inconsistency of the proposed Ordinance with the Master Plan. He said his belief was that the proposed Ordinance should not be passed or modified but instead a new Ordinance based on the neighboring RC-3 Zone should be drafted. He said a new Ordinance based on the RC-3 zone will result in a compatible development, appropriate densities, and suitable affordable housing. Mr. Jackson reminded the Council that their decision on the King of Kings property sets a future precedent for redevelopment and asked the Council to preserve and defend Mountain Lakes' current zoning and Master Plan.

Jim Moody – 17 Robinhood Drive

Mr. Moody said that the public had been denied notice or involvement in the meetings held by the Economic Development Subcommittee and Hornrock Properties. He also said that the Council had shown no urgency in developing an affordable housing plan and that this had put the Borough in a weakened position. He stated that Mr. Phillips, the Planner, had admitted that the Ordinance was spot zoning for affordable housing and that the Ordinance developed by Mr. Phillips was very similar to the Ordinance proposed by the builder on February 9<sup>th</sup>. He offered his opinion that Hornrock was using COAH as an excuse and mentioned that the Township of Parsippany had fought a builder's remedy lawsuit. He said he thought the Council should change the zone to RC-3.

Rebecca Lubetkin – 15 Robinhood Drive

Ms. Lubetkin expressed questions about the process. She questioned why the Borough had not written a plan when it had years to do so and two-thirds (2/3) of other municipalities had filed affordable housing plans and received immunity from builder's remedy lawsuits. She mentioned that she was a member of the Concerned Citizens group and asked why the Council had held secret meetings with the developer and why the public was not informed. She asked if the Council was planning to vote tonight without a site plan and offered her opinion that doing so would tie the hands of the Planning Board and Zoning Board. She asked if the Council had enough time to reflect and absorb the recommendations from the Planning Board.

**Jack Knight – 26 Sherwood Drive**

Mr. Knight said he was not pro Ordinance 12-15. He mentioned that he had seen the draft lawsuit, as it had recently been disclosed. He referred the Council to Chapter 208-17 of the Borough Code and the RC-3 Zone, which he said were perfectly adequate for a zoning Ordinance. He offered his opinion that proposed Ordinance 12-15 goes way beyond what a zoning Ordinance needs to be, fails to address road access or the environment, and is just letting the builder have what he wants.

**Tom Schell – 31 Lockley Court**

Mr. Schell stated that he was a resident of Pine Edge and moved there because it was a dead end road and he enjoys walks in the community with his grandchildren. He asked the Council to please find a way to have access to the property through Route 46 and not through Sherwood Drive.

**Ellen Emr – property owner, 19 Sherwood Drive**

Ms. Emr stated that Planning Board unanimously struck down both Ordinance 12-15 and changes to the housing element of the Master Plan. She said the Council avoided due process regarding the housing element and that the housing committee has only met sporadically. She said the housing committee should be given a chance to do its more and provide a more in depth review including risks and assessments. She offered her opinion that the Council should table Ordinance 12-15 and asked how they would justify voting for an Ordinance that was inconsistent with the Master Plan.

**Fred Kanter – 81 Hanover Road**

Mr. Kanter read the rest of Mr. Knight's prepared remarks and said the builder is using affordable housing to pressure the Council.

**Sandy Batty – 15 Lockley Court**

Ms. Batty said that the Borough controls its future by making a plan, and questioned whether or not a comprehensive plan would have picked this site as it doesn't conform and the Borough has strong standards for environmental protection. She mentioned the housing committee has been working to create a housing plan and that there were other options for fulfilling the affordable housing obligation, such as group homes, mixed use, and re-purposing vacant buildings. She also mentioned that the Borough was still waiting to find out its number for affordable housing. Ms. Batty said the Council should not act prior to the development of a housing element and fair share plan. She offered her opinion that the council should extend the RC-3 Zone to this site as it was compatible with the neighboring zone and it would protect the steep slope and wetlands. She stated that any Ordinance should have a twenty percent (20%) set aside for affordable housing to be consistent.

**Cathy Harvey – 28 Robinhood Drive**

Ms. Harvey told the Council that she was very concerned as the land is environmentally sensitive and she doesn't feel due diligence was done, and she urged them to vote against the Ordinance. She said the introduction of the Ordinance pre-empted a site plan concept and therefore the Borough would not be able to determine environmental damage. She said this small piece of property cannot sustain the proposed development.

**Peter Hererra – 31 Sherwood Drive**

Mr. Hererra stated he adamantly opposed the development because the property was environmentally constrained and there would be an impact to education, water, crime and traffic. He said the Council should require the developer to pay the costs and mitigate the impact on the community, such as emergency services and public works. He mentioned that in California, developers build schools and fire stations. He urged the Council to do the right thing, if not on the front end but on the back end.

**Jack Gentul – 14 Sherwood Drive**

Mr. Gentul talked about the doomsday outcome of passing the Ordinance and said he felt that the Council had offered huge building and land use concessions and that control has been relinquished to the builder and that there had been a lack of transparency. He said that the Borough will incur liability for allowing only one emergency access. Mr. Gentul asked why the issue had to be decided before the Borough has a housing plan and wanted to know what was discussed with the builder. He stated that the public wants the Council to fight for control, not relinquish it, and asked them not to leave a legacy of appeasement.

**Jacques van der Merwe – 30 Ball Road**

Mr. van der Merwe said he did not believe there was a housing crisis in New Jersey and that the intent of fair housing was not to destroy the character of a town. He said that Mountain Lakes is a very special place and this Ordinance offered no benefit for the town.

**Jeff Leman – 32 Sherwood Drive**

Mr. Leman mentioned that he and his wife live at the end of Sherwood Drive and are most impacted by the development, but that this is not just a NIMBY issue for him. He said he feels the Ordinance constrains the Planning Board and that there are safety ramifications. He asked if there would be sidewalks, if a fire truck could access the site in the winter due to the steep slopes, how drives would get up and down the hill. Mr. Leman said the developer would be gone and then it would be a Borough problem. Mr. Leman stated that he was not against development and fully supported affordable housing and thought the best path forward was to extend the RC-3 Zone to the property.

Brian Marshall – 220 Morris Avenue

Mr. Marshall told the Council he thought the Ordinance was misguided and fell short in resource management, land use planning and probably in acceptable affordable housing. He said he thought it was a mistake not to use the accepted minimum of twenty percent (20%) affordable housing. Mr. Marshall stated his opinion that passing this Ordinance is the wrong response and is inconsistent with land use principals and he recommended the Council start over and do it right with sound planning and a suitable and appropriate site.

Jim Hyson – 23 Ronarm Drive

Mr. Hyson said he was disappointed that there was no presentation by the builder tonight, as he felt they should share and make what is known part of the public record. He mentioned that in the Township of Parsippany, the developer was right out front and that they have had a satisfactory settlement. He asked the Council what would happen if the builder backs out or files for bankruptcy as happened with the Legacy project, and said he thought if that situation occurred the Council would have to revise the Ordinance again. Mr. Hyson recommended the Council adopt an RC-3 zone with a twenty percent (20%) overlay.

Steve Arnold – 4 Craven Road

Mr. Arnold referenced the correspondence he had emailed to Council and said it would be much more powerful to have a topographic map showing the steep slopes and the environmental constraints of the property. Mr. Arnold said he had found such a map, developed last year by Dykstra Walker, in the Borough Library and he would like to see this map included in the Ordinance. He also offered his opinion that the recommendations made by the Planning Board were weak and vague and that the comments offered by Mr. Jackson should have been the comments given by the Board. Mr. Arnold said the Council should not include the R-AH Zone as the Planning Board suggests as it is way too intense and he asked if the Planner had been instructed to use the R-AH Zone as a model.

J. Wilson Mitchell – 44 Hillcrest Road

Mr. Wilson stated that the tax records for the property show it as classified as taxable property designated as farmland. He asked if the Council has checked to see if King of Kings is producing documents to support a farmland assessment. He offered his opinion that the Council should approach the property owners for commercial back taxes. In addition, Mr. Wilson stated that he has researched builders' remedies and hasn't seen successful lawsuits on smaller tracts with environmental sensitivities.

Zoya Lehrer – 31 Howell Road

Ms. Lehrer mentioned that she and her family had recently moved to Mountain Lakes due in part to the prestige of the schools and she was concerned about the impact to the schools and the potential influx of students.

Ron Schornstein – 10 Craven Road

Mr. Schornstein requested the Council buy the property and preserve it and said he felt such an action would be supported by the community.

Debbie Lawlor – 47 Sloping Hill Terrace, Wayne

Ms. Lawlor said she worked for Mazur Consulting and was representing the Concerned Citizens Group. She identified herself as a professional planner with thirty-five (35) years of experience as a land use and environmental planner. Ms. Lawlor stated that Mountain Lakes has had strong planning and shouldn't plan now based on the threat of a lawsuit. She said that the Borough shouldn't plan for a developer but should plan for a property, and that the Planning Board had raised inconsistencies with the Master Plan. Ms. Lawlor told the Council that the Concerned Citizens Group wanted the RC-3 Zone extended rather than the R-AH Zone and that the RC-3 Zone is consistent with the recommended changes made by the Planning Board to proposed Ordinance 12-15.

Rob Simon – 25 Independence Boulevard, Warren

Mr. Simon identified himself as an attorney representing Penny Leman, Donna Moody and Rainer Mimberg. He referenced a 1977 Supreme Court decision and told the Council they had the ability to allow him to speak for an additional five (5) minutes. He said that the Council could technically still approve the Ordinance even though the report from the Planning Board showed it to be completely inconsistent with the Master Plan. He stated that a Zoning Ordinance should encourage the most appropriate use of land and that even if the governing body states its reasons for departing from the Master Plan it does not get a free hall pass. Mr. Simon took exception with the complaint written by Hornrock and the comment that the property does not have significant environmental constraints.

Gretchen Riccardi – 110 Lake Drive

Ms. Riccardi mentioned that she lives on a steep slope and that it's very scary in the winter. She asked the Council to think about the people who would live there and the steep slopes. She said she loves her town but hates her driveway.

Marilyn Dowling – 41 Lowell Avenue

Ms. Dowling said she was speaking to represent her six (6) month old granddaughter. She told the Council she hoped that they were honorable and smart men and read a passage from a book entitled "The Road to Character". She asked the Council to think about the next generation and to do what they were charged to do, which was to make the best decisions for the residents.

Jackie Bay – 430 Morris Avenue

Ms. Bay asked the Council to be not only smart and honorable but to be brave and to work with the citizens. She cited examples from the recent event in the Township of Parsippany and said that their Town Council had worked with its citizens on a compromise.

Terry McInerney – 12 Littlewood Court

Ms. McInerney wondered if the Council could issue a bond and purchase the property as interest rates are low and she feels King of Kings would negotiate. She stated that she was not against religious institutions having tax free properties but development would mean additional stress on police, fire, road, bridges, water and sewer. She said the increase in tax revenue will mean an increase in municipal costs and that the town needed another level at Borough Hall before it needed new townhomes.

Linda Hyson – 23 Ronarm Drive

Ms. Hyson asked why not wait for the housing committee to finish its core work, especially as the committee was expressing that the work would be done by the end of January. She asked for an environmental and physical impact analysis. She requested the builder hold a community engagement session in order to present the plan and answer questions. Ms. Hyson pointed out that no one has spoken in favor of this Ordinance and that the Borough Council represents the residents and not the developer.

Marnie Vyff – 10 Vale Drive

Ms. Vyff mentioned the impact of setting a precedent. She said there were a lot of homes up for sale and asked what would prevent a developer from buying other properties and trying to build there. She expressed concern that other areas of town would become vulnerable.

With no else one wishing to be heard, Mayor McWilliams closed the public hearing.

In response to Council questions about the responsibility for the regulation of the environment and the potential environmental impact, Mr. Oostdyk responded that environmental concerns about the property are relevant. He stated that the Department of Environmental Protection (DEP) is charged with the primary regulation of the environment and that the proposed Ordinance contains no violation of DEP regulations. He said that locally, the Planning Board and Environmental Commission have roles and controls at the application level. He told the Council that environmental concerns such as steep slopes and wetlands do not preclude a developer from filing a builder's remedy lawsuit.

In response to Council questions about affordable housing, Mr. Oostdyk said that a twenty percent (20%) set aside for affordable housing is called a presumptive density. He said that presumptive density is not a minimum requirement and is not always the number that works for a property. He stated that the Borough's Ordinance establishing a twenty percent (20%) affordable housing set aside for new developments was based on a growth share methodology which is a concept no longer endorsed today.

In response to questions about tax status, Mr. Oostdyk said that rules about tax assessment status are set by the State of New Jersey and not the local municipality. He said that there will be a rollback assessment if the property ceases to be used for farmland.

Mr. Phillips stated that the issues of water, sewer, and emergency access were all the purview of the Planning Board and would be addressed when a site plan is filed. Mr. Phillips said that an environmental impact statement (EIS) would also have to be filed by the developer. He mentioned that there are many issues that still have to be considered at the Planning Board level and both he and Mr. Oostdyk agreed that the proposed development is not a done deal. Mr. Phillips said that tree preservation and protection, soil erosion and sediment control, and stormwater management are all issues that will have to be addressed by the developer during the application process. Mr. Phillips told the Council that forty (40) units is the maximum density allowed under the proposed Ordinance. He said that forty (40) units might not be attainable and/or feasible once a site plan has been fully engineered and filed and all factors which affect density have been considered.

The Council expressed a desire to include in the Ordinance at least some, if not all, of the suggestions made by the Planning Board. Mr. Oostdyk explained Council comments from the Planning Board could not be included this evening as they would be considered substantive changes to the Ordinance. He said that substantive changes would require the reintroduction and re-noticing of the Ordinance. Mr. Oostdyk said the Council could choose to vote to adopt the Ordinance tonight and then could consider amendments at a later date.

The Council expressed their appreciation for the efforts of the Planning Board and the thoughts and comments of the many concerned citizens. Council members discussed the various factors involved in making the best decision for the community, including the opportunity to control the outcome of the development versus the possibility of having to concede control to the courts should the property be subject to a builder's remedy lawsuit. Council members mentioned that the very issues about which residents had expressed concerns, such as density, school population, and the environment, could be significantly more impacted in the case of court action.

Mr. Oostdyk stated that prior to considering a motion to adopt the Ordinance, the Council needed to consider a motion to adopt a Resolution stating special circumstances for considering the adoption of an Ordinance not in conformance with the Master Plan.

**RESOLUTION 185-15**

**R185-15 - Resolution Setting Forth the Special Reasons for the Adoption of Ordinance 12-15 Notwithstanding Inconsistency with the Master Plan**

**WHEREAS**, pursuant to N.J.S.A. 55D-26, Ordinance 12-15 was forwarded upon introduction to the Planning Board for a determination of consistency with the Master Plan; and

**WHEREAS**, the Planning Board has reviewed Ordinance 12-15 and has determined that the Ordinance is inconsistent with various provisions of the Master Plan; and

**WHEREAS**, N.J.S.A. 55D-26 provides that “the governing body, when considering the adoption of a development regulation, revision, or amendment thereto, shall review the report of the planning board and may disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in the minutes the reason for not following the recommendation.”; and

**WHEREAS**, The Borough Council wishes to memorialize its reasons for proceeding with the adoption of Ordinance 12-15.

**NOW, THEREFORE, BE IT RESOLVED** by a majority of the full authorized membership of the Borough Council of the Borough of Mountain Lakes, County of Morris, State of New Jersey, that the Borough Council has determined that it should proceed with the adoption of Ordinance 12-15 notwithstanding its inconsistency with the Master Plan and the recommendations of the Planning Board for the following reasons:

1. The Borough Council has determined that there is very little vacant and developable land in the Borough suitable for affordable housing; and
2. The Borough Council takes seriously its obligation to create a realistic opportunity for the creation of affordable housing within the Borough; and
3. The Borough Council has determined that the parcel of land in the RC-3 Zone (Block 116, Lot 3.01) is suitable for affordable housing; and
4. That in order to create a realistic opportunity for affordable housing in the Borough of Mountain Lakes it is necessary to deviate from the Master Plan and to rezone the RC-3 Zone specifically for the creation of affordable housing and create standards which will encourage the development of the property.

Council Member	By:	2 <sup>nd</sup> :	Yes	No	Abstain	Absent
Albergo			X			
Barrett	X		X			
Borin		X	X			
Happer			X			
Lester				X		
Holmberg			X			
McWilliams			X			

The Borough Council then voted on Ordinance 12-15.

**Introduced: September 14, 2015**

**Adopted: November 23, 2015**

Council Member	By:	2 <sup>nd</sup>	Yes	No	Abstain	Absent	By	2nd	Yes	No	Abstain	Absent
Albergo		X	X						X			
Barrett	X		X				X		X			
Borin						X			X			
Happer			X					X	X			
Lester			X							X		
Holmberg			X						X			
McWilliams			X						X			

**11. ATTORNEY'S REPORT (verbal)**

Mr. Oostdyk had nothing additional to report.

**12. MANAGER'S REPORT (verbal)**

Mr. Sheola reviewed his written Manager's report. He thanked Ms. Reilly for her efforts during his time out of the office and said he would be returning to work full-time next Monday, as he had received medical clearance.

Mr. Sheola said he expected to complete employee evaluation forms by mid to the end of January. He mentioned that he was updating and reviewing the organizational chart and job descriptions.

Ms. Reilly reported that the Office of Emergency Management had provided brochures for citizens regarding emergency preparedness. Mayor McWilliams suggested the information be included on the website.

**13. ORDINANCE 14-15**

**ORDINANCE AMENDING CHAPTER 111 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF MOUNTAIN LAKES AND REVISING THE FEE SCHEDULE**

**BE IT ORDAINED** by the Borough Council of the Borough of Mountain Lakes, in the County of Morris and State of New Jersey, as follows:

**Section 1.** Chapter 111, Section 111-3 entitled "Fee Schedule" shall be amended by the addition of the following **Subsection O "Miscellaneous"** as follows:

**Dishonored or Returned Checks** **\$ 20.00**

**Section 2.** Chapter 111, Section 111-3 entitled "Fee Schedule"; **Subsection N "Tax Collector"** shall be amended by the addition of the following fees:

**Fee for Multiple Lien Redemption Requests** **\$ 50.00**

**Section 3.** Chapter 111, Section 111-3 entitled "Fee Schedule"; **Subsection C "Department of Public Works"**, shall be amended to read in its entirety as follows:

**1. Sewer Connection Permits:**

**Residential** **\$ 50.00**  
**Commercial (businesses)** **\$100.00**  
**Industrial/manufacturing** **\$150.00**

**2. Sewer Connection Fee**  
**Per Dwelling Unit** **\$5,000.00**

**3. Water Services Fee:**

**Turning Water On** **\$ 50.00**  
**Turning Water Off** **\$ 50.00**  
**Remove Meter** **\$ 50.00**  
**Set Meter, 5/8 or 3/4 inch, includes meter** **\$300.00**  
**Set Meter, One Inch, includes meter** **\$375.00**  
**Set Meter, larger than one inch** **\$ 50.00 plus cost of meter**  
**Final Meter Reading for Account Closeout** **\$ 50.00**  
**Test Meter** **\$ 50.00**  
**Temporary Water Service/Construction Purposes**  
**(non-potable)** **\$ 60.00 plus**  
**water usage/volume**  
**Hydrant Flow Test Observation** **\$100.00**  
**Pit Meter Installation plus cost of meter** **\$150.00**  
**Water connection fee, per dwelling unit**  
**1 inch or smaller** **\$2000.00**  
**1 1/2 inch or larger** **\$3000.00**

**4. Water rates (effective January 1, 2015)**

**Water Meters per 100 Gallons**

**Residential:**

Up to 11968 Gallons	\$0.3770
From 11969 to 22440 Gallons	\$0.3947
From 22441 to 37400 Gallons	\$0.4058
From 37401 to 59840 Gallons	\$0.4252
From 59841 to 74800 Gallons	\$0.4412
From 74801 Gallons and Above	\$0.4652

**Commercial/Industrial:**

Up to 11968 Gallons	\$0.4010
From 11969 to 22440 Gallons	\$0.4363
From 22441 to 37400 Gallons	\$0.4572
From 37401 to 59840 Gallons	\$0.5134
From 59841 to 74800 Gallons	\$0.5615
From 74801 Gallons and Above	\$0.6096

\*Minimum charges, pro rata when meter is connected for less than a quarter

Residential Water Meter	\$45.12 per quarter
Commercial Water Meter	\$47.99 per quarter
Sprinkler Meters per 100 Gallons	

**Residential:**

Up to 11968 Gallons	\$0.4812
From 11969 to 22440 Gallons	\$0.5680
From 22441 to 37400 Gallons	\$0.6224
From 37401 to 59840 Gallons	\$0.6674
From 59841 to 74800 Gallons	\$0.8182
From 74801 Gallons and Above	\$1.0524

**Commercial:**

Up to 11968 Gallons	\$0.5214
From 11969 to 22440 Gallons	\$0.6080
From 22441 to 37400 Gallons	\$0.6625
From 37401 to 59840 Gallons	\$0.7091
From 59841 to 74800 Gallons	\$0.8406
From 74801 Gallons and Above	\$1.0909

\*Minimum charges, pro rata when meter is connected for less than a quarter

*Residential Sprinkler Meter	\$57.60** per quarter
*Commercial sprinkler meter	\$62.40** per quarter

\*\*Sprinkler meters are billed only 2nd and 3rd quarters

Late charge on delinquent bills	8%
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Pavement replacement, per square yard	\$15.00
Sprinkler standby rental, per quarter	\$25.00

**5. Sewer (rates based on water usage by water meter)**

Residential	Rate per 100 gallons	0.53141
Commercial/Industrial		0.57653
Late charge on delinquent sewer bills		8% per quarter
Minimum Charge for sewer usage, pro rata when meter is connected for less than a quarter:		
Residential sewer fee:		\$ 63.60
Commercial sewer fee:		\$ 69.00

**6. Solid Waste Rates**

a. Bag charges for garbage collection (sold in quantities of 10)	
15 gallon capacity	\$12.50
30 gallon capacity	\$25.00

**b. Garbage and recycling collection base rate, per quarter for non-resident \$88.50**

*Late penalty on delinquent garbage/recycling bill per quarter or part thereof	8%
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**c. Trash Day Charges**

Car	\$20.00
Station wagon, minivan, small SUV	\$30.00
Large SUV, small pickup	\$40.00
Large pickup, full-size van	\$60.00
Exterior items	\$20.00
Trailer ("U-Haul" type):	
5 feet x 5 feet x 4 feet	\$100.00
10 feet x 6 feet x 6 feet	\$350.00
20 feet x 6 feet x 6 feet	\$700.00
22 feet x 6 feet x 6 feet	\$1,400.00
24 feet x 8 feet x 8 feet	\$1,500.00

\*An additional fee of \$10.00 will be charged for trash that extends beyond the vehicle interior and/or is attached to the exterior of the vehicle

**7. Street opening, driveway connection, curb permits**

Curb lowering permit	\$25.00
Driveway or private road construction permit	\$25.00
Street opening, driveway connection or curb opening permit	\$100.00

In addition to the fee for a street opening permit, there shall be an additional fee charged for street openings which occur earlier than five (5) years from completion of the street improvement as follows:

a. During the first year following completion of street improvement	\$1,000.00
b. During the second year following completion of street improvement	\$900.00
c. During the third year following completion of street improvement	\$800.00
d. During the fourth year following completion of street improvement	\$700.00
e. During the fifth year following completion of street improvement	\$600.00

**8. Boat/Watercraft Removal Fee**

End of season removal	\$50.00
Removal after December 15 <sup>th</sup>	an additional \$5.00 per day up to an additional maximum of \$50.00
<b>Boat/Watercraft Retrieval</b>	<b>\$50.00</b>

**Section 4.** Chapter 111, Section 111-3 entitled "Fee Schedule"; **Subsection F "Soil Moving"**, shall be amended to read in its entirety as follows:

1. Minor soil moving permit	\$100.00
2. Major soil moving permit	\$300.00
3. Soil moving escrow	\$1,250.00
Soil erosion and sediment control certification fees shall be as follows:	
Individual single-family residential products	\$200.00 per project
Residential subdivisions per lot	\$500.00 base fee plus \$100.00
Residential developments and site plans per dwelling unit	\$1000.00 base fee plus \$50.00
Nonresidential development and site plans	\$1000.00 base fee plus \$100.00 per acre

**Section 5.** If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

**Section 6.** All Ordinances or parts of Ordinances, which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

**Section 7.** This Ordinance shall take effect immediately after final passage and publication in the manner provided by law.

Following introduction, the above Ordinance will be published in accordance with the law and a public hearing will be held on **December 14, 2015**.

Prior to the adoption of the Ordinance, Councilman Happer mentioned that the review of this Ordinance is now an annual process and requested Council acknowledge the staff for its role in the process.

**Introduced: November 23, 2015**

**Adopted:**

Council Member	By:	2 <sup>nd</sup>	Yes	No	Abstain	Absent	By	2nd	Yes	No	Abstain	Absent
Albergo			X									
Barrett			X									
Borin			X									
Happer	X		X									
Lester			X									
Holmberg		X	X									
McWilliams			X									

**14. \*RESOLUTIONS**

- R145-15 Resolution Approving Participation by the Borough of Mountain Lakes Police Department In the 1033 Military Surplus Program (carried from October 13, 2015)
- R182-15 Resolution Authorizing the Transfer of Appropriations
- R183-15 Resolution Authorizing the Redemption of Tax Title Lien 2011-09
- R184-15 Resolution Authorizing the Payment of Bills

**15. \*MINUTES**

- November 9, 2015 (Executive)
- November 9, 2015 (Regular)

**16. \*DEPARTMENT REPORTS**

- Construction Department October 2015
- Department of Public Works October 2015
- Fire Department October 2015
- Health Department October 2015
- Police Department October 2015
- Recreation Department October 2015
- Tax Department October 2015

**17. \*BOARD AND COMMITTEE AND COMMISSION APPOINTMENTS**

**NONE**

Prior to the Consent Agenda vote Councilman Happer requested that Resolution 145-15, Resolution Approving Participation by the Borough of Mountain Lakes' Police Department In the 1033 Military Surplus Program be discussed separately from the Consent Agenda. Councilman Lester requested that the Police Department report be discussed separately from the Consent Agenda.

Council Member	By:	2 <sup>nd</sup> :	Yes	No	Abstain	Absent
Albergo			X			
Barrett	X		X			
Borin			X**			
Happer			X			
Lester			X			
Holmberg		X	X			
McWilliams			X			

**\*Indicates Consent Agenda Item**

Matters listed as Consent Agenda Items are considered routine and will be enacted by one motion of the Council and one roll call vote. There will be no separate discussion of these items unless a Council member requests an item be removed for consideration.

\*Councilman Borin abstained from voting on Purchase Order Number 13487.

**Resolution 145-15**

**Resolution Approving Participation by the Borough of Mountain Lakes' Police Department In the 1033 Military Surplus Program (carried from October 13, 2015)**

Councilman Happer asked that the language regarding the signatories be clarified to reflect that all three (3) signatures are required.

Council Member	By:	2 <sup>nd</sup> :	Yes	No	Abstain	Absent
Albergo			X			
Barrett			X			
Borin		X	X			
Happer			X			
Lester			X			
Holmberg	X		X			
McWilliams			X			

**Police Department Report**

Councilman Lester stated that he could not endorse or accept the report as the current overtime for 2015 was at the second highest level in six years decent and could quite possibly exceed the highest level on record from 2013. He said overtime issues have been discussed all year. Deputy Mayor Holmberg asked if there had been dialog at the Public Safety Subcommittee regarding solutions to the overtime issue. The Council consensus was to ask Mr. Sheola to report to the Council a methodology for managing and measuring overtime in 2016 as well as to develop an approach for how overtime costs can be avoided.

**18. COUNCIL REPORTS**

**NONE**

Councilman Albergo thanked Mr. Kanter for staying for the entire meeting.

Mr. Sheola announced the potential need for a special meeting in December in order to vote on a transfer resolution.

The Council discussed timing for amendments to Ordinance 12-15, as there is only one meeting in December, the first regular Council meeting is not until the end of January, and any land use Ordinance would require a referral to the Planning Board. Mr. Oostdyk agreed to speak to the Planner about an Ordinance amendment and to report to the Council at the next meeting.

**19. PUBLIC COMMENT**

**Please state your name and address for the record.** Each speaker is limited to one (1) comment of no more than five (5) minutes with no yielding of time to another person.

Mayor McWilliams opened the public comment portion of the meeting with the consent of the Council. Mayor McWilliams explained the Council's policy of limiting each speaker to five (5) minutes with no yielding of time to another person.

Fred Kanter – 81 Hanover Road

Mr. Kanter thanked Mr. Albergo for thanking him. He said that the public complaints about the effects of development on the school population are a red herring and that he had been witness to the same complaints in the 1970's. He asked Deputy Mayor Holmberg to explain his comments about the second property in town. He asked Councilman Lester to explain to him the comment made by the Councilman regarding residents shutting down a meeting. Mr. Kanter mentioned to the Council that side talk is illegal and the attorney should be issuing a reminder to the Council members who are talking.

With no one else wishing to be heard, Mayor McWilliams closed the public comment portion of the meeting.

**19. ADJOURNMENT at 11:30 PM**

Motion made by Councilman Happer, second by Councilman Borin to adjourn the meeting at 11:30 p.m., with all members in favor signifying by "Aye".

**\*Indicates Consent Agenda Item**

Matters listed as Consent Agenda Items are considered routine and will be enacted by one motion of the Council and one roll call vote. There will be no separate discussion of these items unless a Council member requests an item be removed for consideration.

**ATTEST: NOVEMBER 23, 2015**