

Borough of Mountain Lakes

COAH-Highlands Subcommittee

Report

to

Borough Council

April 26th 2010

Chair Cathy M. Harvey

Mayor Blair Bravo

Deputy Mayor Charles Gormally

Councilman Stephen Shaw

Planning Board Chair Sandy Batty

Planning Board Member Corey Nachsen

Background:

In 2008 the Borough had two ad hoc committees working on evaluating two State programs. One committee was evaluating the Highlands Regional Master Plan (RMP) and the other was had studied the revised COAH 3rd round rules. In October of 2008 Governor Corzine issued an Executive Order (EO 114), which directed the Highlands Council and COAH to work cooperatively to review third round growth projections for consistency with the Highlands RMP. In response to EO 114, COAH and the Highlands entered into a Memorandum of Understanding (MOU) extending the time frame for municipalities in the Highlands Region to submit third round fair share plans until December 8, 2009. (The deadline has since been extended to June 8, 2010).

The purpose of the extension was to allow those municipalities time to evaluate how COAH's growth projections may be adjusted based on conformance to the RMP. In response to the extension and linkage of the two issues, the Borough Council appointed a COAH-Highlands Committee in January of 2009. The committee was charged to "*... work in conjunction with the Borough Manager, Planner and Engineer to evaluate the advantages, disadvantages and impacts to the Borough in participating in the COAH third round and or opting into the Highlands Regional Master Plan. The committee will also facilitate the application for the plan conformance grant funding available from the Highland Council.*"

Process:

The COAH-Highlands Committee first met on January 26th of 2009 and designated Cathy Harvey as the chair and Blair Bravo as secretary. Designated members of the committee then met with Borough Engineer Bill Ryden and Planners Susan and Duggan Kimball. The Borough Manager was also present at many of the meetings but three individuals have been in the manager's position since the committee's inception.

The committee successfully applied for a Highlands planning grant, developed a critical timeline, obtained copies of the RMP for each committee member (a 464 page document), and began reviewing all of the guidance documentation in connection with the Highlands Council's rather cumbersome 7 module conformance process. Depending on the module requirements, either the planner or engineer would attend a mandatory orientation session prior to beginning the specified module. These sessions were for professionals only and committee members did not attend. The committee would review and comment on all work generated by the professionals before the completed modules were submitted to Highlands Council.

In most instances, work on the next module could not begin until the preceding module was approved by the Highlands Council. This coupled with confusing guidance on some modules caused some delays in the process necessitating the aforementioned six month extension. Throughout the process, all of the Mountain Lakes submissions were made within the designated timeframes and in some instances ahead of schedule.

Following is a brief description of each module:

Modules 1&2: GIS mapping and analysis of the Borough reviewed by Bill Ryden and the committee. The mapping was used to develop the build out numbers.

Module 3: Highlands based Housing Element and Fair Share Plan developed by Susan Kimball and reviewed by the committee and discussed at Council Meeting of December 14, 2009. (Attached)

Module 4: Highlands Environmental Resources Inventory, a 69 page color document prepared by Bill Ryden and reviewed by the Environmental Commission.

Module 5: Highlands Element, a 67 page document prepared by Duggan Kimball and discussed by Planning Board. (See attached PB submission statement dated 7/23/09) This could be adopted as a free standing addition to our Master Plan.

Module 6: Highlands Area Land Use Ordinance, 133 pages of model ordinances that would have to be adopted to comply with the Highlands. (See attached memo dated August 14, 2009 from Duggan Kimball)

Module 7: A process outlining how to formally petition for plan conformance also known as “opting in”

We have completed all the submissions through Module 6 and have met all requirements for full reimbursement of expenses through the planning grant program as part of the committee’s original charge.

The bulk of the committee’s work was presented to the Borough Council in a report entitled “*Interim Report to the Borough Council on the Highlands Planning Process*” dated November 30, 2009 and discussed at a council meeting on December 14, 2009. Since this report was previously distributed to all council members and discussed at length, it is not included as a part of this report. The purpose of this report is to update the council on our progress since the last report and to evaluate various options regarding participation in COAH 3rd round and the Highlands Regional Master Plan.

Status of Interim Report Recommendations:

As directed by the Borough Council at the meeting of December 14, 2009, the COAH-Highlands Committee continued participating in the Highlands planning process. Specifically, the committee submitted the required *Summary of Housing Obligations* and *Draft Housing Element and Fair Share Plan*. No committee work was done on the third recommendation to establish a cooperative relationship with an area housing nonprofit group. However, it should be noted that the Borough has entered into a management agreement with the Housing Partnership of Morris County to administer the 8 COAH units at the Park Place development.

Options:

It is important to note that participation in the COAH process is voluntary for any municipality as is conformance to the RMP for municipalities such as Mountain Lakes that are entirely in the Highlands Planning Area. However, the MOU requires that any municipality conforming to the RMP must submit a plan to COAH using Highlands adjusted growth share numbers. Therefore, three basic options are available:

- Take no action at this time
- File a conventional COAH third round plan
- “Opt in” to the RMP and submit a Highlands adjusted COAH plan

Take no action at this time

Since participation is voluntary, it is not necessary for the Borough to take any action. The Borough can pick up the process from where it currently stands at anytime. This option may impede the Borough’s ability to obtain certain state grants and more importantly, as of June 8, 2010 the Borough will no longer have protection from a builder’s remedy lawsuit. This option requires no formal action by the Borough Council. Under this option, the Borough may want to continue working to provide a range of housing opportunity as they have in the past by developing a local plan.

File a Conventional COAH third round plan

The details of this option were outlined in the committee’s November 30th Interim Report. In summary, COAH’s third round growth share projection for the Borough is 89 units with the possibility of getting the number adjusted down to 46 units. The prior round unmet need of 62 units remains. The Borough is responsible for developing a plan to meet and fund the growth share numbers. Protection from Builder’s Remedy litigation is afforded under this option.

“Opt in” to the RMP and submit a Highlands adjusted COAH plan

The COAH implications of this option were fully detailed in the Interim Report. The Highlands adjusted growth share projection is 11 units. As above, the Borough is responsible for developing a plan to meet and fund the growth share numbers and the Borough is protected from a Builder’s Remedy lawsuit.

In addition to the COAH requirements, this option requires the Borough to petition the Highlands Council for Plan Conformance. This process is outlined in a 41 page document on the Highlands Council website (<http://www.highlands.state.nj.us/njhighlands/plan> conformance) and requires public participation through locally held public hearings. Many of the submittal documents have already been prepared in draft form and would need to be reviewed and adopted on a local level.

The Borough Planning Board would be required to amend its local master plan to include the **Highlands Plan Element** developed under module 5. The Planning Board reviewed this document and commented:

The Planning Board has concerns about some of the Model Plan Element boilerplate language, including applicability of certain portions to this Borough, reconciling definitions with conflicting definitions in existing municipal ordinances, and difficulties in evaluating some of the policy issues while not yet decided on the question of "opting in."

The **Highlands based ERI** developed in module 4 would have to be adopted as an addendum to our existing ERI and an integral component of our master plan. This ERI would be used to develop natural resource protection ordinances. The Highlands ERI mirrors the overlay zone scheme developed in the RMP with three overlay zones and four sub-zones. The zones are used to define resource constrained lands and land use capability.

The **Housing Element and Fair Share Plan** developed in Module 3 would have to be adopted and approved by COAH.

Model Highlands Ordinances from module 6 would have to be adopted as an "add on" to the Borough's Land Use Ordinances. A summary of these ordinances are outlined in a memo dated August 14, 2009 from planner Duggan Kimball (attached). There are several exclusions and exemptions built into the act most significant being the one excluding improvements to single-family dwellings existing as of 8/10/04. Other provisions provide for 300 foot buffer around lakes and protection of slopes in excess of 15%.

Conformance to the RMP with adjusted COAH obligations protects the Borough from a builder's remedy lawsuit and gives the Borough the presumption of validity as it relates to land use decisions and litigation. Enhanced grant opportunities are supposed to be available to Highlands's communities. No process is established for "opting out" at a later date.

Other Considerations:

Since its inception, COAH has been embroiled in controversy and lawsuits. Today several challenges to the third round rules are working through the courts. Legislation is also pending that would drastically alter the way NJ approaches affordable housing and eliminate COAH entirely. Additionally Governor Christie's transition report "*finds there is no constitutional obligation for such a state agency to exist*". In all probability any COAH plan developed today will be obsolete before it is approved by COAH.

Conclusions:

The committee is not making a formal recommendation at this time. The issues are complex, fluid and may require significant policy decisions best left to the governing body. This report is intended to present the facts as objectively as possible.