

PLANNING BOARD MINUTES
PUBLIC MEETING
OCTOBER 8, 2009 - 7:00 P.M.
HELD AT OAKLAND SENIOR CENTER
20 Lawlor Drive, Oakland, New Jersey

Pursuant to Chapter 231, Public Law 1975 (Open Public Meetings Act) adequate notice of this meeting has been provided by:

- ❑ Adoption of an annual schedule of meetings
- ❑ Posting copy of same at Borough Hall
- ❑ Forwarding copy of same to the Record
- ❑ Mailing a copy to any person requesting same

**** MEETINGS CONCLUDE AT 10:30 P.M., THEREFORE, NO TESTIMONY WILL BE TAKEN AFTER 10:00 P.M.**

PLANNING BOARD MEMBERS:

Elaine T. Rowin, Barry Colyer, Christopher Baczewski, Daniel Hagberg, John Morris, Councilwoman Marcalus, Mayor John Szabo and Chairman Thomas Potash.

FLAG SALUTE, MEETING OPENED AT 7:06 P.M., ROLL CALL:

Present: Mrs. Rowin, Messrs. Colyer, Baczewski, Hagberg, Morris, Councilwoman Marcalus, Mayor Szabo and Chairman Potash.
Absent: None

Also in attendance, Joseph Russo, Esq., (Board Attorney) and Kevin Tichacek, (Boswell Engineering) and Steve Lydon, (Burgis Associates)

PUBLIC HEARING BEGINS:

Motioned by Mrs. Rowin and seconded by Councilwoman Marcalus, to open the meeting to the public for matters not on the agenda was voted unanimously by the Board.

No comments

Motioned by Mrs. Rowin and seconded by Mr. Colyer, to close this portion of the meeting to the public for matters not on the agenda and to continue with matters on the agenda was voted unanimously by the Board.

PUBLIC HEARING:

1. Presentation by Highland Council on the Highlands Conformance Plan.

Ms. Eileen Swan, Executive Director for the Highlands Council, was before the Board to give a power point presentation on the Highlands Conformance Plan on the Highlands Regional Master Plan.

She explained that the Highlands Region is approximately 3.5 million acres that reaches portions of Pennsylvania, New Jersey, New York and Connecticut. The Highlands region of New Jersey is approximately 17 percent land base. This provides half of the population with its water supply through ground water and the other half is supplied by reservoirs.

The process for the Conformance Plan is to have the designated municipal master plan comply with the Highlands Regional Master Plan.

Conformance in the Preservation Area is mandatory and the Planning Area is by choice of the municipality. There are 88 municipalities in New Jersey located within the Highlands. Five of the municipalities are entirely in the Preservation Area, 36 municipalities are within the Planning Area and 47 municipalities are within both the Preservation and Planning Areas. Oakland is split in half by the Preservation and Planning Area.

The plan was adopted by the Highlands Council July 17, 2008 and put into effect September 8, 2009, allowing 15 months for the entire Preservation Area to conform with the Regional Master Plan.

In the Planning Area, so far, 76 out of 88 municipalities have filed a Notice of Intent meaning they plan to work with the Highlands. Seventy-two municipalities and four counties have applied for an Initial Assessment Grant. Seventy-five municipalities and two counties have filed for a 2009 Plan Conformance Grant Application. The grants funded would provide the municipalities an opportunity to explore and plan to conform. Ms. Swan explained that none of the filings or applications would be binding.

Ms. Swan reviewed the areas on a map that would be involved with the Plan Conformance. She explained that the Conformance Plan requires the municipalities to produce seven Modules.

Module 1 and 2, the municipalities were required to supply Current Municipal Conditions and a Build-Out Analysis. This Module is basically a vacant land analysis, which has also been used by COAH, to assess developable land and project future growth. Ms. Swan informed the Board that the Highlands Council has more information on this region, especially concerning water. They have developed a database by block and lot and had the professionals for the municipalities review and verify the information. Module 2 consists of constraints applied by the Regional Master Plan.

Module 3, the Housing Element and Fair Share Plan, prepares municipalities for affordable housing. Ms. Swan explained that COAH has given a six-month extension period to municipalities planning to conform to provide affordable housing numbers. This extension would be until June 8, 2010.

Module 4, Environmental Resource Inventory, is a template that has been provided to the municipalities to work on and return.

Module 5, Highlands Master Plan Element, is the master plan element to be consistent with the Regional Master Plan. Municipalities that are not in the Preservation Area, would keep their own ordinances in place.

Module 6, Land Use Element, is a template also provided to the municipalities to work on and return.

Module 7, Municipal Self-Assessment, Implementation Plan and Petition, this applies to the Preservation Area.

Ms. Swan explained that in addition to Module 1 and 2, the Build-Out Analysis would report land-based capacity (developable land), resource based capacity (septic system yield and water capacity) and utility base capacity (public water and waste water).

Ms. Swan explained that on September 5, 2008 Governor Corzine issued Executive Order 114 directing the Highlands Council and the Council of Affordable Housing (COAH) to enter in to a Memorandum of Understanding. COAH would grant a waiver to municipalities that are located within the Highlands Preservation or municipalities planning to conform to the Regional Master Plan within their Planning Area, resulting in a lower affordable housing obligation.

She explained that Governor Corzine signed the A-500 Chapter 46 law the same time the Highlands Council adopted the Regional Master Plan which is in the refining stages. This would allow the reinstatement of Regional Contribution Agreements (RCA's) where municipalities would be able to transferring Fair Share obligations between municipalities on a smaller scale. The Planning Area would now be obligated to either develop or transfer out up to 50 percent of their affordable housing obligation to willing municipalities.

Ms. Swan informed the Board that on August 12, 2009 a resolution was approved granting a waiver on the COAH's Third Round projections to municipalities planning to conform to the Highlands Regional Master Plan. Calculations would now be based on the Regional Master Plan growth projections. In addition, the municipalities planning to conform would receive an extension to provide COAH their adjusted affordable housing numbers.

The Borough of Oakland consists of 5,629 acres which are split between the Planning and Preservation Area. The Planning Area consists of 3007 acres and the Preservation Area consists of 2622 acres.

The Borough was awarded a \$15,000 Initial Assessment Grant and a \$50,000 - \$100,000 Plan Conformance Grant by the Highlands to assist the costs incurred for planning and conforming. In addition, a \$25,000 Transfer of Development Rights (TDR) Feasibility Grant was issued to do a study exploring adequate water and sewer potential as well as development. Municipalities can receive up to \$250,000.00 through TDR Grant money.

Ms. Swan reviewed the status of Oakland's Modules. Module 1 & 2 are complete and on the Highlands website. Module 3, the Borough has received an extension. Module 4, a draft of the Environmental Resource Inventory has been received. Module 5, a draft of the Highlands Master Plan has also been received. Module 6, the Highlands Council has provided the Borough a draft of the Highlands Master Plan for consideration. Module 7, Highlands Council has provided the Borough with the materials to complete a Petition for Plan Conformance consideration due December 8, 2009 for the Preservation Area.

The Borough's draft conformance decision should be received by March 2010 to make certain that adjusted COAH numbers are consistent with the Highlands Council. If the Borough does not plan to conform, then numbers would need to be worked out with COAH, due June 8, 2010.

The Act mandates that Preservation Area requires a resolution and, at the same time, the Borough can draft an ordinance for the Planning Area. This does not bind the Borough into a decision of conformance. However, it allows the council and professionals to continue to plan for the conformance.

Ms. Swan reviewed an aerial map done for their Resource Assessment showing existing conditions. In order to protect these areas, it is based upon 3 primary zones such as Protection, Conservation and Existing Community.

There are no Conservation Areas such as open space or farmlands in the Borough. The Protection zone consists of pristine conditions and forested lands. Existing Community is based upon impervious coverage, public water systems and wastewater systems.

Ms. Swan reviewed areas of prime ground recharge where the water enters the system and has the best chance to recharge the aquifers as well as wellhead areas to avoid contamination.

She also examined existing infrastructure such as pipes in the ground, areas served by public water and areas of impervious coverage. Also included, the topography of existing steep slopes and watersheds in the Borough.

Ms Swan informed the Board that a commercial building would be allowed to construct up to 125 percent more than the footprint of the building. A residential addition or driveway would be exempt from the Highlands Act in the Planning and Preservation Area. However, in the Preservation Area, it would be a one-time only situation and an easement would have to be placed on the property to alert a future purchaser of these constraints.

She reviewed the Build-Out for potential development prepared by the Highland Council. There would be 229 developable acres, 219 vacant acres and 10 oversized properties. This does not include current residential exemptions. Ms. Swan emphasized that this Build-Out Analysis is a tool for the affordable housing obligations.

COAH's build-out projections total 460 units, 225 affordable units and Highlands Council projects a total of 41 units, 16 affordable units.

So far, the Highlands Council has received \$25,000,000.00 and currently receives \$4,400,000.00 a year for grant assistance for planning, conforming and legal representation.

Chairman Potash questioned if Mayor and Council adopt the resolution for the Preservation Area and pass an ordinance for the Planning Area, could the decision to conform with the Planning Area be reversed. Ms. Swan responded that if the Borough is not sure whether to conform with the Planning Area by December 8, 2009, then they should wait until they are ready. If an ordinance is adopted, then the Borough is required to adopt Regional Master Plan requiring the Land Use Element to be revised. Ms. Swan reminded the Board that conformance with Planning Area is not binding. For instance, when they have the Regional Master Plan Re-Examination and changes to the Planning Area are unacceptable to the municipality, then the municipality can decide to no longer conform. And visa versa.

Chairman Potash informed Ms. Swan that the Borough has plans to improve their downtown area and would like to include sewers. However, the Borough has been told that this would be difficult due to the deficit of water in the town and prohibiting wastewater leaving the town. The Mayor added that this was a solid goal for the Borough and an area to perhaps meet some of the affordable housing obligation. Ms. Swan responded that failure to do anything about this is a failure on the part of Highlands and NJDEP. She expressed that together a solution would have to be work upon to meet the goals of the Borough.

A discussion ensued concerning possible solutions such as TDR grant monies that may allow a wastewater management plant in the needed area.

Mr. Morris questioned if Ms. Swan knew of any municipalities that have already opted into conformance. Ms. Swan responded that she was not aware yet but would begin to know more when the Preservation Area's resolution has been adopted. She expressed that she was aware of towns that are definitely working towards conformance. Mr. Lydon added that one of the municipalities that he works with has just opted into conformance.

Mr. Morris questioned what the benefits would be for Oakland by opting into conformance for the Planning Area. Ms Swan responded that by conforming, it would provide a legal protection, in the event, of lawsuits by developers. Access to grant money for the future planning of the Borough. It would allow the Borough to eventually deal with the exemptions on a local level.

Chairman Potash questioned how opting into conformance in the Planning Area would affect the RCA's. The RCA program is only offered through the Highlands agency but it does not require that you conform.

Mrs. Rowin questioned if you do not opt into conformance, would you still be required to conform to the regulations. Ms. Swan responded that in the Preservation Area you would always have to follow the regulations. If you do not opt into conformance, you would not have to follow regulations for the Planning Area. However, for water allocation and wastewater management permits the Borough would still have to follow Highlands regulation for the Planning Area.

Mrs. Rowin question if the community does not opt in, would the grant money received be in jeopardy and have to be paid back. Ms. Swan responded no, that this is a good planning investment and instrumental in helping the Borough as well as the Highlands.

Mr. Russo commented that that it is disturbing that two common agencies in New Jersey could look at the same land and come up with totally different affordable housing numbers, such as, Highlands 41/46 and COAH 460/225. Ms. Swan responded yes it is disturbing. However, with municipal professionals involved verifying the land analysis, the Highlands Council feels comfortable with results and the numbers. The municipality would have to verify with COAH the realistic build-out in the same manner.

Mr. Colyer questioned the effect on commercial property located in the Preservation Area. Ms. Swan responded that the plan does allow for re-development opportunities and waiver offers. She explained that they would have to work with NJDEP and would be more flexible in the Planning Area.

Mr. Colyer questioned if the Borough opts into conformance, would the zoning restrictions for the downtown area become greater. Ms. Swan responded that the problem is septic and the Highlands would help research and prioritize if the Borough plans to conform, but she advised to take advantage of the TDR grant money to get started.

Councilwoman Marcalus referred to an article she had read in the newspaper about the Conformance Plan. She explained that her understanding of the article was that it would not matter one way or the other if the Borough opts in. Ms. Swan responded that there would be a difference in the Land Use ordinance if the Borough opts into conformance. Councilwoman Marcalus agreed with Ms. Swan that her presentation did indicate a difference.

Mr. Lydon commented that the Regional Master Plan made it seem like re-development areas have to be contiguous. Ms. Swan responded that they do not have to be. However, some towns opt for to go to a larger area for redevelopment.

Mrs. Rowin questioned if the reference made concerning 16 septic systems per unit was the developable yield or capacity. Ms. Swan responded that the Highlands indicate that with current conditions, this would be the capacity.

Motioned by Mrs. Rowin and seconded by Councilwoman Marcalus, to open the meeting to the public regarding Ms. Swan's presentation on the Highlands Conformance Plan was voted unanimously by the Board.

Mr. Christopher Visconti questioned if the wells in town could be utilized for receiving excess water from the lakes and then putting it back. Ms. Swan responded that it was not likely to be permitted.

Mr. Alex Opper questioned a wastewater treatment plan that was filed with the NJDEP for sewers in the downtown area. Mayor Szabo responded that it was also for the Pinnacle site required by court order but was denied by the NJDEP. Mr. Opper questioned who ultimately rules the jurisdiction over this matter, NJDEP or the Highlands. Ms. Swan responded currently the county gives the authority. On occasion

there are conflicts but Highlands is aware of NJDEP rules and NJDEP are aware of the Highlands plan.

Mr. Roy Lobosco questioned, at this time, if a property is in the Highlands Planning Area and a wastewater treatment plan is submitted would Highlands be involved. Ms. Swan responded they are still in the Highlands and would have to receive a determination of consistency from the Highlands Council.

Motioned by Mayor Szabo and seconded by Mrs. Rowin, to close the meeting to the public regarding matters concerning Ms. Swan's presentation on the Highland Conformance Plan was voted unanimously by the Board.

Chairman Potash thanked Ms. Swan for the presentation and taking questions from the Board and public.

Meeting recessed at 8:45 p.m.
Meeting resumed at 8:50 p.m.

2. Rose – 655 Ramapo Valley Road, Block 1301, Lot 32.03. Public hearing for major soil move.

Chairman Potash announced that he and Mr. Colyer would be recusing themselves from the application and Mr. Morris would be the chair for this application.

Mr. Mark Palus from MAP Engineering located in Kinnelon, New Jersey was before the Board to represent Mr. Rose. Mr. Palus and Mr. Rose were sworn in. Mr. Palus reviewed his credentials and the Board accepted his qualifications.

Mr. Palus explained the subject property is the result of a major subdivision that was granted in 2005 for James Residential Properties. He explained that the property is a flag lot with the Ramapo River running behind it and an access road to Ramapo Valley Road by easement. All utilities are in place.

The property is deep and approximately 3.7 acres. There is a flat plateau on the eastern part of the property where the Applicant is proposing to build a single-family home all. The property is in the flood plain and the dwelling is located the required distance from river. The previous owner of the property filed for the stream encroachment permits. Mr. Rose has submitted modifications for that permit.

Exhibit A-1, Soil Moving Plan by MAP Engineering dated September 3, 2009.
Exhibit A-2, Stream Encroachment Permit issued by NJDEP dated July 6, 2005.
Exhibit A-3, Stream Encroachment Permit modifications dated January 5, 2009.

Previous owners did some of the filling on the property but in order to construct the home, the Applicant proposes to move 1,180 cubic yards of soil on-site and 135 cubic yards off-site.

Mr. Tichacek informed the Board that he reviewed and clarified with Mr. Palus the calculations for the soil move. He affirmed that there is a valid permit from NJDEP. He verified that the Applicant proposes a partial not a full basement which is permitted by the NJDEP. An approved septic plan is in place details and stormwater management

are being addressed. The only non-conformity would be for the lot width due to the flag lot.

Mr. Morris questioned the capacity under pavers to deal with stormwater. Mr. Palus responded that he would comply with the use of a six-inch bed of gravel under the pavers for the driveway.

The Board questioned noise, tree removal and truck route. Mr. Palus responded that he would follow the rules of the noise ordinance. He added that the trees have already been cleared by permission of the Shade Tree Committee and they would be using 287 but would agree not to go through the center of town.

Motioned by Councilwoman Marcalus and seconded by Mrs. Rowin, to open the meeting to the public regarding matters concerning the Rose application was unanimously voted by the Board.

No comments.

Motioned by Councilwoman Marcalus and seconded by Mrs. Rowin, to close the meeting to the public regarding matters concerning the Rose application was unanimously voted by the Board.

Mr. Morris entertained a motion.

Motioned by Councilwoman Marcalus and seconded by Mr. Hagberg, to approve the Rose application subject to Health Department approval and stormwater management issues to be agreed upon.

Roll Call Vote: Ayes: Mrs. Rowin, Messrs. Baczewski, Hagberg, Morris,
 Councilwoman Marcalus and Mayor Szabo.
 Nays: None
 Abstain: None
 Absent: None

MEMORIALIZATION:

- 1. Vacuum Truck Rental -** 45 Edison Avenue, Block 201, Lot 8 & 9. Approval For a Certificate of Occupancy.

Motioned by Mr. Baczewski and seconded by Mr. Colyer, to memorialize the above resolution of approval.

Roll Call Vote: Ayes: Mrs. Rowin, Messrs. Baczewski, Colyer, Hagberg and
 Councilwoman Marcalus.
 Nays: None
 Abstain: None
 Absent: None

PAYMENT OF BILLS:

Motioned by Mrs. Rowin and seconded by Mr. Colyer, to approve the payment of bills subject to the availability of funds.

Roll Call Vote: Ayes: Mrs. Rowin, Messrs. Baczewski, Colyer, Hagberg, Morris, Councilwoman Marcalus and Chairman Potash.
 Nays: None
 Abstain: None
 Absent: Mayor Szabo

APPROVAL OF MINUTES:

Motioned by Mr. Baczewski and seconded by Councilwoman Marcalus, to approve the September 10, 2009 Minutes.

Roll Call Vote: Ayes: Mrs. Rowin, Messrs. Baczewski, Colyer, Hagberg, Morris, Councilwoman Marcalus and Chairman Potash.
 Nays: None
 Abstain: None
 Absent: Mayor Szabo

NEW BUSINESS:

Mr. Hagberg suggested that an increase be made to the 2010 budget item for Professional Development.

OLD BUSINESS:

A discussion ensued concerning a solution to the walkway at Columbia Bank

PUBLIC MEETING ADJOURNED AT 9:30 P.M.

Motioned by Councilwoman Marcalus and seconded by Mr. Colyer to adjourn the meeting by a unanimous vote by the Board.

Respectfully submitted by,

Kathlyn Gurney/Administrative Assistant