

PLANNING BOARD MINUTES
PUBLIC MEETING
JANUARY 12, 2023- 7:00 P.M.
HELD AT THE OAKLAND SENIOR CENTER
20 Lawlor Drive, Oakland, NJ
www.oakland-nj.org

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 a copy of same at Borough Hall and the Borough's website
- ❑ Advertised in The Record more than 48 hours in advance of the meeting
- ❑ 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:

Sarah Michel, Andrea Levy, Joseph Marscovetra, Michael Rose, Thomas Connolly, Lee Haymon, Gregory Liss, Councilman Kulmala, Mayor Linda H. Schwager and Chairman Thomas Potash.

FLAG SALUTE, MEETING OPENED AT 7:05 P.M., ROLL CALL:

Present Members: Mmes. Michel and Levy, Messrs. Marscovetra, Connolly, Liss, Councilman Kulmala, Mayor Schwager and Chairman Potash.
Absent Members: Mr. Haymon

EXCUSE ABSENCES:

Motioned Mr. Connolly and seconded by Mr. Liss, to excuse the absence of Mr. Haymon was voted unanimously by the Board.

Mr. Joseph Russo, Esq., Board Attorney, Ms. Eileen Bolan, Borough Engineer and Mr. Steve Lydon, Borough Planer were in attendance.

BOARD PROFESSIONALS SWORN IN:

Ms. Eileen Bolan and Mr. Lydon were sworn in.

Chairman Potash welcomed Councilman Kulmala back as the Board's liaison. He announced that Ms. Levy will sit in for Mr. Haymon.

Mayor Schwager requested to make a statement to the public. She explained that she has always been happy of the relationship between the governing body and the Board of Education but was disappointed at the number of disturbing phone calls she received this week stemming from the K. Hovnanian application before the Planning Board for the property on McCoy Road.

At the last meeting in December, it was mentioned by one of the Board of Education members that they were unaware of the public hearings for the K. Hovnanian application. She informed the audience that she has announced the public hearings for the K. Hovnanian application at the Council meetings and the Board of Education has a Council liaison that should be reporting to them. In addition, Indian Hills High School was noticed by certified mail concerning easements and walkways pertaining to this application.

She discussed a misconception concerning the sewers for this project would help the Borough's downtown sewer project. This is false, sewers for this project will be hooked up to Franklin Lakes and go through the NWBUA strictly. This application is before the Planning Board because of a consent order agreement between the Borough and the property owner which involves affordable housing. As part of the agreement, an ordinance was established to support the project. Along with many towns going through the same thing, this is the best possible outcome for the town to avoid a lawsuit that they will most likely lose. She expressed that instead of listening to rumors, she suggested that people come to the Council meetings, call the Borough Administrator or contact their Council liaison for accurate information.

Mayor Schwager welcomed all public who attended the meeting and wished more would attend so that they would receive the truth. She offered that there are transcripts and the settlement agreement available for review.

OPEN MEETING TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA.

Motioned by Mr. Connolly and seconded by Mr. Liss, to open the meeting to the public was voted unanimously by the Board.

No comments.

CLOSE MEETING TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA.

Motioned by Mr. Connolly and seconded by Ms. Michel, to close the meeting to the public was voted unanimously by the Board.

REORGANIZATION OF THE BOARD:

CHAIRMAN:

Motioned by Mr. Liss and seconded by Ms. Michel, to nominate Thomas Potash as Chairman to the Board.

Roll Call Vote: Ayes: Mmes. Michel and Levy, Messrs. Rose, Marscovetra, Connolly, Liss, Councilman Kulmala and Mayor Schwager.

Nays: None

Abstain: None

Absent: Mr. Haymon

VICE CHAIRMAN:

Motioned by Mr. Connolly and seconded by Mr. Marscovetra, to nominate Gregory Liss as Vice Chairman to the Board.

Roll Call Vote: Ayes: Mmes. Michel and Levy, Messrs. Rose, Marscovetra, Connolly, Councilman Kulmala, Mayor Schwager and Chairman Potash.

Nays: None

Abstain: None

Absent: Mr. Haymon

SECRETARY:

Motioned by Mr. Connolly and seconded by Ms. Levy, to nominate Joseph Marscovetra as Secretary to the Board.

Roll Call Vote: Ayes: Mmes. Michel and Levy, Messrs. Rose, Connolly, Liss, Councilman Kulmala, Mayor Schwager and Chairman Potash.

Nays: None

Abstain: None

Absent: Mr. Haymon

BOARD ATTORNEY:

Chairman Potash announced that three firms submitted RFQ's for Board Attorney. The firms consist of King, Moench and Collins, LLP, Marmero Law, LLC and Uscher, Quait, Uscher and Russo. All three firms are qualified, and rates are comparable. The committee recommends that the Board continue to retain Uscher, Quait, Uscher and Russo as Board Attorney since Mr. Russo has done an outstanding job assisting the Board for 30 years. He entertained a motion.

Motioned by Mr. Connolly and seconded by Mr. Liss, to appoint Uscher, Quait, Uscher and Russo as Board Attorney for 2023.

Roll Call Vote: Ayes: Mmes. Michel and Levy, Messrs. Rose, Marscovetra, Connolly, Liss, Councilman Kulmala, Mayor Schwager and Chairman Potash.

Nays: None
Abstain: None
Absent: Mr. Haymon

BOARD ENGINEER:

Chairman Potash announced that two firms submitted RFQ's for Board Engineer. The firms consist of Neglia Engineering and Boswell Engineering. Both firms are qualified and have comparable fees. The committee recommends that the Board continue to retain Boswell Engineering as the Board Engineer since John Yakimik has done an excellent job assisting the Board. He entertained a motion.

Motioned by Mr. Connolly and seconded by Mr. Liss, to appoint Boswell Engineering as Board Engineer for 2023 and John Yakimik as their representative.

Roll Call Vote: Ayes: Mmes. Michel and Levy, Messrs. Rose, Marscovetra, Connolly, Liss, Councilman Kulmala, Mayor Schwager and Chairman Potash.
Nays: None
Abstain: None
Absent: Mr. Haymon

BOARD PLANNER:

Chairman Potash announced that two firms submitted RFQ's for Board Planner. The firms consist of Neglia Engineering and Burgis Associates. Both firms were qualified and had comparable fees. The committee recommends that the Board continue to retain Burgis because of their knowledge of the town and to follow through with the Downtown project. In addition, they were asked to review another planner's RFQ which was submitted to Mayor and Council. He commented that the firm, T & M Associates, is qualified but fees were higher and they lacked Highlands and affordable housing experience. He entertained a motion.

Motioned by Mr. Rose and seconded by Ms. Michel, to appoint Burgis Associates, Inc. as Board Planner for 2023 and Steve Lydon as their representative.

ADMINISTRATIVE ASSISTANT:

Motioned by Ms. Michel and seconded by Ms. Levy, to appoint Kathy Gurney as Recording Secretary to the Board.

Roll Call Vote: Ayes: Mmes. Michel and Levy, Messrs. Rose, Marscovetra, Connolly, Liss, Councilman Kulmala, Mayor Schwager and Chairman Potash.
Nays: None
Abstain: None
Absent: Mr. Haymon

OFFICIAL NEWSPAPER:

Motioned by Mr. Rose and seconded by Mr. Liss, nominating The Bergen Record as the Official Newspaper for the Board.

Roll Call Vote: Ayes: Mmes. Michel and Levy, Messrs. Rose, Marscovetra, Connolly, Liss, Councilman Kulmala, Mayor Schwager and Chairman Potash.

Nays: None

Abstain: None

Absent: Mr. Haymon

BY-LAWS:

Motioned by Mr. Rose and seconded by Mr. Liss, adopt the Planning Board By-Laws.

Roll Call Vote: Ayes: Mmes. Michel and Levy, Messrs. Rose, Marscovetra, Connolly, Liss, Councilman Kulmala, Mayor Schwager and Chairman Potash.

Nays: None

Abstain: None

Absent: Mr. Haymon

PUBLIC HEARING:

1. K. Hovnanian – McCoy Road, Block 4202, Lots 1, 2 & 3. Continued public hearing for a Preliminary Site plan and Major Subdivision.

Chairman Potash informed that at the last meeting, the Board did not approve the application but authorized Mr. Russo to draft a resolution in the affirmative for the K. Hovnanian application. The resolution has been revised numerous times by professionals, applicant and Board member. Mr. Russo thought it be best to go over his issues and the Board members can comment as well.

Mr. Russo explained he was satisfied with most of the revisions but one thing that came up was the contribution for repairs to the Allerman Brook which the amount has not yet been determined. In the footnote of the resolution, he explains how the contribution will be calculated. Mr. Meese made note explaining that the word “nexus” needs to be used explaining the 1% contribution for the repairs. Mr. Russo had concerns with the word “nexus” but after a conversation with Mr. Meese, they agreed it is a legal issue and the resolution can be challenged if there is not nexus. Legally, the applicant cannot gift the town as part of the application, but they will honor the allowable 1% contribution to repair that portion of the brook. Mr. Russo and Mr. Meese used different wording that they both agreed upon. The wording will be, “the nexus as determined by the applicant and agreed by the Board.”

A discussion ensued concerning when the 1% would be paid and if the Engineer would evaluate how the contribution amount was calculated for that specific area of the brook. Mr. Russo responded that there will be a developer's agreement explaining this as well an escrow account will be established to fund this. It was also mentioned that Mr. Yakimik would look into an alternate process that could be taken. Mr. Russo explained that they would agree on as much as they can and make those revisions on a clean copy of the resolution to be voted on at the February meeting.

Mr. Russo pointed out another issue concerning the installation of the rip-rap. He questioned if Mr. Lydon was satisfied with explanation given by Mr. Cote. Mr. Lydon responded that they would continue working on the language and a mutual solution working with the water on that portion of the site. Mr. Cote agreed to Mr. Lydon's request.

Mr. Russo clarified that the final draft of the resolution will include the wording, "the homeowner's association documents will be reviewed by the Board Attorney." He is satisfied with the wording that the HOA will be responsible for all the pruning and maintenance for K. Hovnanian portion and confirmed that the Ingerman will be responsible for their own snow removal, maintenance and pruning. A discussion ensued concerning garbage/recycling. Mr. Russo informed the Board of a statute that runs parallel with the Kelly Bill allowing reimbursement for affordable rentals referring to garbage collection. Mr. Geoffrey Long with Ingerman responded that in a situation where the town has garbage collection, the affordable units are eligible for reimbursement for the number of pickups per week the town offers. He explained that this does not include recycling, Ingerman will provide recycling bins and service for the affordable units. Mr. Russo confirmed that the Borough will reimburse Ingerman for garbage collection and the applicant will provide its own recycling. Mr. Long responded this is correct and this development will probably require 2 garbage pickups weekly so if the Borough only provides 1 pickup, Ingerman will only receive reimbursement for that 1 pickup. He did inform Mr. Russo that, under that statute, their lot does not get reimbursed for snow removal. A discussion ensued concerning the development being part of a pilot program. Mr. Long responded that the pilot program will have no impact on the Borough.

Mr. Russo explained that the Borough Attorney requested a change that it be stated in the resolution that the HOA will maintain and repair the sewer line connection. Revisions to the wording was made by Mr. Meese. However, he wants to make it understood that the HOA will be responsible for maintaining and repairing sewer and water line connections for the market rate units. The sewer lines are going through Franklin Lakes and private water will be supplied by Veolia.

Mr. Russo addressed the topic concerning a signal at the intersection between McCoy Road and Colonial Road in the event the County requests this. He questioned who would be responsible for paying for that. A discussion ensued and it was decided that this does not have to be added.

In addition, sidewalk location will be at the Borough's discretion and will require an escrow account. A discussion ensued concerning the length of sidewalks. Chairman Potash responded that this was discussed during testimony and will be included in the developer's agreement. A

discussion ensued concerning a small encroachment by Indian Hills High School on the applicant's property. Indian Hills High School will have to provide a certificate of insurance for the encroachment.

There was discussion concerning reimbursement by the applicant to the Board of Education for a demographics study needed. Mr. Meese responded that this is not necessary. There is data published by Rutgers and annually updated concerning the projection of school age children and the impact. Councilman Kulmala expressed that since the taxpayers will ultimately pay for the study, the payment of the study should be the responsibility of the applicant. Mr. Meese responded that the application complies with the ordinance which was considered and was adopted by Mayor and Council.

The Mayor clarified that an annual review will be done of affordable housing incomes who would do it. Mr. Long explained every year census data is released and Ingerman management will conduct income verification on the affordable housing residents and make sure they qualify. They will then report back to the Borough's Administrative Agent making sure they are compliant.

Councilman Kulmala questioned if the applicant would be repaving McCoy Road after running water and sewer lines into the new development. Mr. Connolly responded that the applicant will have to apply for a road opening permit and they will have to abide by the directive for that permit. Councilman Kulmala expressed that McCoy Road was recently paved and wants to make sure the applicant coordinates with all the utility companies that the road is repaired properly. He requested that Boswell check the ordinance to find out the directive with opening and closing a road for new development. Chairman Potash informed Councilman Kulmala that contractors securing a road opening permit are required to provide a bond equal to replacing pavement that was disturbed and the town can use that bond to repave if they are not happy with the results.

Councilman Kulmala questioned if fiberoptic cables will be run to the project. Mr. Meese responded that this will all being worked out with the cable company in place. All the units are wired with all the newest and high-speed internet. A discussion ensued concerning bollards and signs.

Mr. Lydon addressed the 10-acre conservation easement and whether the Borough has interest to accept the easement because the current plan gives no access. Mr. Russo explained that in the resolution it gives the Borough the right to accept or decline the easement. Chairman Potash explained that the 10-acres will always be preserved and it will not matter if we have access or not. Mr. Meese responded that the easement is required to remain in its current state and does not serve a lot of purpose, but it is part of the settlement agreement.

Mr. Lydon addressed items such as a site distance easement and a guiderail fence on the steep side of the access road leading to the detention basin. Councilman Kulmala verified if Shade Tree Commission was satisfied. Mr. Cote responded that most of the requests have been addressed but they continue to work with Mr. Clark. Mr. Meese and Mr. Russo make additional minor corrections in the resolution. No further discussion

Chairman Potash announced that the application would continue to the February 9, 2023 meeting, with no further notice.

2. Amended Housing Element and Fair Share.

Mr. Lydon explained that last year he presented the revised Housing Element & Fair Share Plan, it was approved and endorsed Mayor and Council. Since then, the Borough has been contacted by another developer offering development that could satisfy more affordable housing obligations for the town. He explained that since 2015, towns rejecting development that include affordable housing are being sued and end up losing.

The amendment to the HE&FSP is to include Block 1706, Lot 4.01, a 2.5-acre property behind CityMD, for 24 units of which 6 units will be affordable housing rental units. We will receive rental credits and be able to relieve some of the Borough's affordable housing obligation. In addition, they are proposing a commercial use with a fast-food drive thru.

There was a revision to table 23 pertaining to the Bi-County property where bonus credits for 9 rental units have been deleted. The total of affordable credits is 27 and the bonus credits have been increased from 21 to 30 because of the Fanale/Hovnanian property. The overall total of affordable credits being increased from 61 to 70.

Mr. Russo announced that this public hearing has been notice in The Bergen Record and notice by mail to the surrounding towns and the County. This decision will be memorialized at the February 9, 2023 meeting. Chairman Potash entertained a motion to open the meeting to the public regarding comments pertaining to the Housing Element and Fair Share Plan.

Motioned by Mr. Connolly and seconded by Mr. Liss to open the meeting to the public regarding matters pertaining to the Housing Element and Fair Share Plan was voted unanimously by the Board

Ms. Ann Cieder expressed some confusion concerning when she would be able to address the predicted number of students that the new development will generate. It was explained to Ms. Cieder that there has already been testimony given and public comment on this subject. At the December 8, 2023 meeting the application concluded and the public was given the opportunity to comment and ask questions for the final time before the application went to a vote.

Ms. Cieder expressed her concerns with the new development and the increase of students in the already crowded schools. Mr. Lydon explained that the property is zoned for the development. Since the early 70's when affordable housing was introduced, towns are obliged to approve developments with affordable housing or get sued. Therefore, the state says that regardless the number of students, the municipality is obligated to educate them.

A discussion ensued concerning timeframe of the development so that they can plan for the extra students. Mr. Lydon responded that perhaps 3 years from now. The Board offered that there are transcripts that the public can read. No further questions.

Motioned by Mr. Rose and seconded by Councilman Kulmala, to close the meeting to the public regarding matters pertaining to the Housing Element and Fair Share Plan was voted unanimously by the Board.

Chairman Potash entertained a motion to adopt the amended Housing Element and Fair Share Plan.

Motioned by Mr. Connolly and seconded by Mr. Liss, to adopt the amended Housing Element and Fair Share Plan.

Roll Call Vote: Ayes: Mmes. Michel and Levy, Messrs. Rose, Marscovetra, Connolly, Liss,
Councilman Kulmala, Mayor Schwager and Chairman Potash.
Nays: None
Abstain: None
Absent: Mr. Haymon

PAYMENT OF BILLS:

Motioned by Mr. Rose and seconded by Ms. Michel, to pay the bills subject to the availability of funds.

Roll Call Vote: Ayes: Mmes. Michel and Levy, Messrs. Rose, Marscovetra, Connolly, Liss,
Councilman Kulmala, Mayor Schwager and Chairman Potash.
Nays: None
Abstain: None
Absent: Mr. Haymon

APPROVAL OF MINUTES:

December 8, 2022, Minutes:

Motioned by Mr. Rose and seconded by Mr. Liss, to approve the December 8, 2022, minutes.

MEMORIALIZATIONS:

None

Councilman Kulmala recommended that the Board allow an “open to the public” session for the public who were confused about when they could comment. A discussion ensued that this may be unlawful since the applicant is no longer here to take part in the discussion. The Board agreed to hear comments from the public but would not be able to respond.

Motioned by Councilman Kulmala and seconded by Mr. Rose, to open the meeting to the public regarding matters not on the agenda was voted unanimously by the Board.

Mr. Peter Mazzilli, president of the K- 8 Board of Education, expressed that they are informed of things separate from Indian Hills High School. He expressed his dissatisfaction for not being directly informed and that they are now scrambling to put together a plan which may require an impact study.

Motioned by Councilman Kulmala and seconded by Mr. Connolly, to close the meeting to the public regarding matters not on the agenda was voted unanimously by the Board.

NEW BUSINESS:

Mr. Russo announced that Master Grinders will appear before the Board at the February meeting.

OLD BUSINESS:

None

PUBLIC MEETING ADJOURNED AT 9:04 P.M.

Motioned by Mr. Morris and seconded by Mr. Liss, to adjourn the meeting by a unanimous vote by the Board.

Respectfully Submitted by,

Kathlyn Gurney, Administrative Assistant

*Next meeting on January 12, 2023