

TOWNSHIP OF DENVILLE  
PLANNING BOARD  
MINUTES

**January 27, 2010**

The Planning Board of the Township of Denville held its regularly scheduled meeting on Wednesday, January 27, 2010. The meeting was held at the Township Municipal Building, 1 Saint Mary's Place and commenced at 7:30 P.M. Chairperson Filauro presided.

**Secretary Probasco read Notice of Public Meeting.**

**Roll Call:**       **Present** – Mayor Hussa, Chr. Filauro, Vice Chr. Lou Maffei, Glenn Buie, Don Kuser, Pete Nienstadt, Jim Schoner  
                      **Absent** – Kurt Schmitt  
                      **Professionals present** – John Miller, Esq., Nicholas Rosania, PE, William Denzler, PP

**MINUTES**

**January 13, 2010**

Motion to adopt the minutes as amended was made by Mbr. Buie seconded by Mbr. Kuntz and unanimously approved by all Members present and able to vote.

**CORRESPONDENCE**

Chr. Filauro referenced various correspondence including a League Alert from the NJ State League of Municipalities regarding COAH.

**PROFESSIONAL COMMENTS**

Nicholas Rosania, Township Engineer had no comments.

William Denzler, Township Planner indicated that he had no comments.

Chr. Filauro inquired about the tree cutting activity on Thurmont Road near the railroad station on the left. Nick Rosania responded that he would look into it. Mayor Hussa inquired about whether Hovnanian still owned the property. The Township Engineer indicated that he hasn't been approached on it. Mayor Hussa stated that he also had no additional items requiring comment.

**PUBLIC HEARINGS**

**Highlands Regional Master Plan Amendment**

Chr. Filauro received confirmation from the Board Secretary that proper legal notice was made on this hearing and then summarized that the purpose of this hearing was to discuss the Highlands. Specifically, the Highlands Element Master Plan Supplement and Highlands Area Land Use Ordinance. The Township Council opted into both areas of the Highlands at the November 24, 2009 meeting. The mandatory deadline for opting into the Preservation Area was December 9, 2009. The language of the Highlands Element Supplement document would be required to be incorporated into our Master Plan.

William Denzler, P.P, Township Planner provided a brief overview of the Highlands. The Highlands Region consists of 88 municipalities in Northwestern New Jersey, 36 towns fall in the Planning Area, 5 towns are in the Preservation Area and 47 towns reside in both the Planning and Preservation Areas. Of the two areas, the Preservation Area is more restrictive. As of December 9, 2009, 56 of the 88 municipalities (64%) opted in. Six of the 36 towns (including Denville) opted into the Planning Area only. Only seven acres of Denville fall in the Preservation Area, along Beaver Brook.

The Township Planner indicated that research and studies have been performed over the course of the past year. The completed items include Build out Analysis, Waste Water, Water Availability and Environmental Constraints. A draft Housing Plan was prepared, Highlands Environmental Resource Inventory, Highlands Master Plan Element (being discussed this evening), as well as the Land Use Ordinance Provisions. The final study to be performed with the Township Council is the Self Assessment study. The Self Assessment study is an ongoing process that reviews all documents as it relates to conformance.

The Highlands budgeted Denville \$50K with an additional allotment of \$15K for the Initial Assessment report. The Township is allowed to request an additional \$50K for a guaranteed maximum of \$100K. The Township Planner reiterated that the tax payers have borne no cost for the Highlands to date as all the funds have been acquired through grants.

The Highlands is comprised of three Zones and four Subzones. The three primary zones are Protection Zone, Conservation Zone and Existing Community Zone. The four subzones are Wildlife Management Subzone, Conservation Zone-Environmentally Constrained Subzone, Existing Community Zone-Environmentally Constrained Subzone and the Lake Community Subzone.

The Highlands Element document is basically a Master Plan with the following sections: (1) Policies, Goals and Objectives, (2) Land Use Plan, (3) Housing Plan, (4) Conservation Plan, (5) Utility Services Plan, (6) Circulation Plan, (7) Land Preservation and Land Stewardship Plan, (8) Agriculture Retention/Farmland Preservation Plan, (9) Community Facilities Plan, (10) Sustainable Economic Development Plan, (11) Historic Preservation Plan, (12) Development Transfer Plan (Optional), and (13) Relationship of Master Plan to State/Regional/Local Plans.

Since Denville opted into the Planning Area, five key items from the Planning Area Goals (page 4, B.1, 2, 3, 4 and 10) were read into the record by Mr. Denzler.

- To protect, restore, and enhance the quality and quantity of surface and ground waters;
- To preserve to the maximum extent possible any environmentally sensitive lands and other lands needed for recreation and conservation purposes;
- To protect and maintain the essential character of the Township Highlands Area environment;
- To preserve farmland, historic sites, and other historic resources; and
- To the extent applicable: To promote local transportation opportunities that are consistent with smart growth strategies and principles.

The Township Planner explained that the **Conservation Plan** provides regulations pertaining to forest resources, open waters and riparian areas, steep slopes, critical habitat, lake management, water resource availability, ground water recharge areas, water quality, wellhead protection, low impact development. The **Circulation Plan** focuses on regional transportation plan and road networks including mass transit, downtown parking, lighting plans and trails for recreation and alternative transportation. The **Land Preservation Stewardship** does not currently exist in our Master Plan. This pertains to open space and recreation. The Special Environmental Zones is not applicable to the Township because there are no areas in Denville that were identified in this zone. The **Historic Preservation Element** pertains to historic, cultural and archaeological resources. Properties in this zone include Greystone, Morris Canal and Knuth Farms. **Scenic Resources** include property along Old Boonton Rd in the Tourne Park Hillside area and the hills and mountains located north of Cedar Lake.

An overview of the Land Use Capacity Maps within the **Land Use** section of the document show the Protection Zones in green. The green depicting no further disturbance and the highest quality of natural resources. The Township does not have any Conservation Zones. The Yellow shows the Existing Community and the developed portions of the Township. The Orange depicts the Existing Community and the Environmentally Sensitive Areas with constraints. The Dark Blue reflects the Open Water Lakes and Ponds with drainage areas of 10 acres or more. The Light Blue reflects 1,000 feet outside of the Open Water Buffers with various tiers of disturbance. The area regulated by the Federal Government is the Small Dark Green area shown.

Chr. Filauro asked the board members for questions before Mr. Denzler continued.

Mbr. Schoner, sought clarification on the color for the existing community zone.

Mbr. Kuntz inquired about the Beaver Brook area and confirmed that area was primarily unbuildable.

Mbr. Nienstadt received confirmation that the rivers would have their own buffer.

Mayor Hussa inquired about the random constrained area in orange that was determined by all environmental constraints such as wetlands, buffers, wildlife habitats, ground water recharge, etc.

Mbr. Buie inquired about the Tourne area being in the Protection Area and received confirmation along with Beaver Brook, Ford Road and along Route 80.

Chr. Filauro inquired about the Wildlife Management Area and was told that the only difference is that it is under Federal jurisdiction.

Mbr. Schoner inquired about the Beaver Brook protection area having no further disturbance as it relates to prior board approvals. Those individuals would have to apply for variances from the Highlands prior to development.

Mr. Denzler spoke to the Exhibits and provided a breakdown of the color shading for reference.

Exhibit T-1 – Denville Township Land Use Capability Zone Map

Exhibit T-2 – Denville Township Water Resources and Critical Habitat

Exhibit T-3 – Denville Township Net Water Availability by HUC14

Exhibit T-4 – Denville Township Steep Slopes and Riparian Corridor Map

Mbr. Kuntz spoke to the restrictions being less than those that currently exist. Mr. Denzler indicated that the steep slopes category in the Highlands starts at 10% where currently Denville's ordinance starts at 15% and actually more restrictive.

Two exemptions exist for single family homes (page 12). One is that increases in footprint size cannot exceed 125% of what it is now provided that you meet the impervious coverage and soil disturbance criteria. Vacant lots zoned for two family homes would not be exempt. Mbr. Kuser received confirmation that the 125% is a maximum total and not each time you come in for a building permit on existing dwellings. Mbr. Buie received confirmation that cantilever's in excess of 18" would count on the footprint. The rationale is to promote vertical increases versus horizontal.

Exemptions on prior approvals after August 2004 - if application received preliminary and final site plan approval and NJDEP either started construction or started by August 2007. Otherwise exemption lost.

The Plan supercedes the existing Master Plan. The content must remain. Additional language can be added but nothing can be decreased or diminished.

Mbr. Buie inquired about the representation on changes that we would like incorporated. Denzler indicated that a representative would attend the regular meetings of the Highlands Council for future updates. Mbr. Buie inquired about the monitoring and regulation of a townships adherence to the plan. Denzler responded that there is a higher burden of proof as it relates to adherence of the plan. Highlands Council will be aware of what the Township is doing but not until after approval. This should not be a problem if the approvals granted are consistent with the plan. Referenced the NJLM League Alert dated January 22, 2010 regarding the Reforms of Fair Housing Act to Abolish COAH.

Chr. Filauro opened to the public for comments.

Ted Einhorn, Esq. represented WAB Associates, (Block 31601, Lot 2) with approximately 14 undeveloped acres of property on Luger Road in the I-2 zone. SSA (Sewer Service Area) Sewer line all the way up to the end. County recommendation to remove the property from the SSA. Eco Sciences conducted a survey. Now due to opting into the Highlands, the County and NJDEP no longer have jurisdiction. Now an Environmentally Constrained SubZone instead of an 42,400 sq. ft. building consistent to the ordinances with the exception of a minor side variance conforming as per Louis Barbieri, PP. Mr. Einhorn spoke to the unfairness of the restrictions imposed by the Highlands Council to a property that has been unrestricted for the twenty years that the property has been owned. Respectfully requested that the Council not opt into the Highlands.

Mayor Husa asked the Board Attorney, John Miller and Bill Denzler to respond. John Miller, Esq. responded that the Highlands is to be an overlay zone to our existing ordinances and thus adding additional restrictions to our existing ordinances.

Arthur Korn (15 Lafayette Place) was present and received clarification from Bill Denzler that the Highlands is an all or nothing plan. If Denville does not adopt all of the plans, etc. then we are not in conformance with the Highlands plan.

Thomas Carlyon (17 Woodland Road) spoke from the perspective of a resident home owner as well as having a construction business. Indicating that the costs to get a small addition on a home would ultimately cost in excess of \$5K after the required exemptions. Spoke to the hardships of additional cost incurred by this new level of zoning. Chr. Filauro asked the Town Planner to provide an idea of the costs for these additions and was told the fees would be determined by the Council. Mr. Carlyon spoke to the additional cost of the fees incurred by required professionals that were not necessary before ultimately making simple construction renovations unachievable / prohibitive in nature.

Chr. Filauro closed the public portion of the meeting and opened the hearing to board members.

Mbr. Kuser inquired about going to the township prior to the highlands council and was told the approvals could be requested concurrently. Mbr. Kuntz received confirmation that approvals from MCPB and NJDEP would still be required. As now approved with conditions of NJDEP, future would be approved with conditions of the Highlands. Mr. Denzler spoke to the main purpose of the Highlands being water conservation for eastern and southern New Jersey. Mbr. Schoner inquired about surrounding towns. Other than Rockaway, nobody opted into the Planning area. Preservation was unable to be developed either way. Opting in is voluntary, reduction in COAH, build out analysis for Denville would only be 50 more houses, using this number no further affordable housing would be required. Bill Denzler spoke to opting out and adding the desired sections of the Highlands Plan into our Master Plan.

Mbr. Maffei indicated that Schoner had asked his one question and then inquired about refuting changes and was told that changes can be done every six years. Stating that at the very least the Master Plan should be revised.

Mbr. Nienstadt inquired opting out, exemptions and inquired about Estling Lake selling to a developer. Mr. Denzler explained that it could not be expanded due to deed restriction.

Chr. Filauro inquired about similar language and perks for Denville. Bill Denzler indicated that the benefits would provide experts to assist in legal issues. The property behind Denville Commons is deemed unable to develop within the Highlands plan for either residential or expansion of commercial property.

Mbr. Buie commented that he trusts the professionals and we are taking the power out of our hands to control our town. Further commenting that it would be great to pick and choose what items we would like in our Master Plan.

Bill Denzler explained that we are not a position to do anything at this time and we can wait until things are not as much in flux. If we opt out, we can always look at it again in another year. Possible additional moratorium on COAH to extend for an additional 90 days from current June to become September.

Mayor Husa obtained statistical numbers from Bill Denzler indicating that 6 of 36 have opted in. The Mayor voiced concern for being overbuilt if we don't opt in and other towns do. Mayor Husa spoke to the COAH numbers being very important to us and indicated that property values going up would be a good thing. Mayor Husa did not agree with the argument of non-residential growth and argued that the spirit of the Highlands Plan was sound.

Chr. Filauro stated this is a difficult decision and thanked the board members for their comments. In closing, Chr. Filauro voiced concern that more information was needed.

**OLD BUSINESS**

Mbr. Schoner referenced the Pierson Industries application and noted that he was out and saw garbage trucks at 2 a.m. in the neighborhood.

**ADJOURNMENT**

Motion to adjourn.

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Denean Probasco, Board Secretary

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Date adopted