

**TOWNSHIP OF MAHWAH PLANNING BOARD
REGULAR /WORK SESSION MEETING MINUTES
MUNICIPAL BUILDING, 475 CORPORATE DRIVE, MAHWAH, N.J.
MONDAY, JUNE 10, 2019 AT 7:30 P.M.**

I. CHAIRMAN 'S OPENING STATEMENT, ROLL CALL, AND FLAG SALUTE

The combined public/work session meeting of the Planning Board of the Township of Mahwah held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ was called to order at 7:34 p.m. by Mr. Crean. The Opening Statement was read according to the Sunshine Law followed by the flag salute.

These minutes are a synopsis of the meeting. A verbatim audio recording is on file at the Planning Board Office, 475 Corporate Drive, Mahwah, NJ. Copies may be purchased for a fee.

II. Roll Call:

The following individuals were present:

Mayor Roth
Mr. Crean
Mr. Donigian
Mr. Ervin
Ms. Galow
Mr. Grewal
Ms. Jankowski
Mr. LoIacono
Mr. Olear
Mr. Pallotta

The following individual was absent:

Mr. Van Duren

Professionals: Peter J. Scandariato, Esq., Michael Kelly, P.E., Debbie Alaimo Lawlor, P.P., Darlene A. Green, P.P., AICP, Geraldine Entrup, A.O.

Mr. Crean welcomed the Township Council to the meeting and introduced Mr. David May, who is the Mahwah Township Council's President. Mr. May read the Council's Opening Statement and a Roll Call of Council Members was taken establishing a Special Meeting of the Township Council.

Mr. Crean noted that a letter was received from Mr. Jaworski dated June 7, 2019, asking that Docket #377A-2 - The RMR Group LLC, be carried to July 22, 2019 with no further notice required.

III. APPROVAL OF BILLS:

Phillips Nizer	March 2019	General	\$ 264.00
Phillips Nizer	April 2019	General	\$ 49.50
Peter Scandariato, Esq.	4/22/19	Meeting Attendance	\$ 250.00

A motion to approve all of the above bills was made by Mr. Ervin and seconded by Mr. Donigian. A roll call of members present revealed 10 aye votes by Mayor Roth, Mr. Crean, Mr. Donigian, Mr. Ervin, Mr. Grewal, Mr. LoIacono, Mr. Olear, Mr. Pallotta, Ms. Jankowski and Ms. Galow.

IV. APPROVAL OF MINUTES: May 20, 2019

A motion to approve the minutes was made by Mr. LoIacono and seconded by Mr. Olear. A roll call of members present revealed 7 aye votes by Mayor Roth, Mr. Crean, Mr. Donigian, Mr. Ervin, Mr. LoIacono, Mr. Olear and Mr. Pallotta.

V. RESOLUTION FOR MEMORIALIZATION:

1. **Docket #570PF – Masouleh Corporation and Famararz Ebrahimi,**
75 Franklin Turnpike & 105 Christie Ave, Block 70, Lot 8 & 9, Resolution of Approval Adopted.

A motion to approve the resolution was made by Mr. Olear and seconded by Mayor Roth. A roll call of members revealed 6 aye votes by Mayor Roth, Mr. Crean, Mr. Ervin, Mr. LoIacono, Mr. Olear and Mr. Pallotta.

VI. OPEN TO THE PUBLIC – 15 MINUTES:

A motion to open the meeting to the public was made by Mr. Ervin and seconded by Mr. Grewal. All voted in favor.

Mr. Paul Scian of 100 Halifax Rd approached. Mr. Scian expressed thanks to the Board Members for their service. He urged that all Zoning changes be discussed in transparent, open sessions. Mr. Scian asked if there would be any changes to the C200 Zone that would affect what is permitted right now. Mr. Scian was told that no changes would be made to the C200 Zoning. Mr. Donigian questioned if Ordinance #1863 regarding the right of way for the cell towers would create change in this Zone. It was clarified that Ordinance #1863 was not a Zoning change. Mr. Scian thanked the Board again for holding these discussions in a public session.

Ms. Kathy Murray of 88 Bridle Path Lane approached. Ms. Murray asked for clarification on the permitted uses in the C200 Zone. Mr. Scandariato stated that the permitted uses would not change.

Mr. Richard De Angelis of McKirdy, Riskin, Olson, DellaPelle at 136 South Street,

Morristown, NJ, 07960 approached and explained that he wanted to speak about the Zoning Ordinances and asked if he should do so then or after the Public Hearing. Mr. Scandariato explained that the Public Hearing was for the review and consideration of the Adoption of the Housing Plan Element and Fair Share Plan. Mr. Scandariato clarified that there were no Zoning Ordinances on the agenda this evening. Further discussion indicated that once the Housing Plan Element and Fair Share Plan was adopted by the Township Council that the Zoning Ordinances would most likely be introduced and sent to the Planning Board for review at a subsequent meeting.

A motion to close the meeting to the public was made by Ms. Galow and seconded by Mayor Roth. All voted in favor.

VII. PUBLIC HEARING(S):

1. E-BD-216-3140 Apple Ridge Condo Association

400 Apple Ridge Boulevard, Block 126, Lot 114

Soil Movement Permit Application for Retaining Wall - Phase III, Movement of Soil exceeds 1,000 Cubic Yards.

Mr. Eric Goldberg, Esq. of Stark and Stark at 993 Lenox Dr., Lawrenceville, NJ approached on behalf of the Applicant. Mr. Stark explained that the Applicant was applying for a Soil Movement Permit Application for the replacement of a retaining wall. Mr. Goldberg stated that the Applicant had placed the advertisement in the newspaper but was requesting a waiver from the 200 foot notification requirement. Mr. Goldberg explained that the 200 foot perimeter surrounding the location of the work was entirely within the confines of the Condominium Association, so no one outside the Association would be impacted. Mr. Goldberg stated that he had discussed this waiver request with Mr. Scandariato, the Planning Board Attorney. Mr. Scandariato supplemented Mr. Goldberg's testimony, explaining the 200 foot notice requirements and agreeing that the waiver request was required even though all property owners within 200 feet are within the Condominium Association. There was a brief discussion about how the Association notifies the members.

Mr. Goldberg introduced Mr. David Hals of Schwanewede/Hals Engineering, at 9 Post Road Suite M-11, Oakland, NJ. Mr. Hals who has been before the Board previously and sworn in, provided his credentials and was accepted as an expert Professional Engineer. Mr. Hals stated that he prepared the plan for the proposed work. Mr. Hals gave an overview of the project, explaining that an existing triple tier retaining wall required replacement. Mr. Hals used the Applicant's submitted Plan titled "Retaining Wall Plan - Block 126, Lot 114 Phase III for Apple Ridge Condo. Association", dated April 8, 2019 as Exhibit-1. Using Exhibit-1, Mr. Hals identified where the location of the work would take place. He explained how the wall would be replaced with a two tier retaining wall. Mr. Hals stated that the soil would stay on site, while stone would be imported as designated on the Soil Movement Permit Application. Mr. Hals discussed the removal and replacement of trees as well as supplemental landscaping that the Association would complete. There was discussion regarding the disposal of the existing railroad ties and the composition of the new walls.

Mr. Kelly explained that the Applicant is replacing many of the walls within the development but that this Application was before the Board because it required movement of more than 1,000 cubic yards of soil. Mr. Kelly stated that the other wall replacements had been handled administratively through his office. Mr. Kelly stated he would send an email to the Applicant requesting clarification on some technical comments regarding retaining wall calculations, global stability analysis and clarification of the number of trees being removed. Mr. Kelly suggested that a condition of approval be that sixteen trees are replaced. There was further discussion concerning what types of trees would be used. Mr. Hals stated that the Applicant agreed to that at least four of the sixteen would be deciduous trees.

A motion to open the meeting to the public was made by Mr. Donigian and seconded by Mr. Ervin. All voted in favor.

No one wishing to be heard, a motion to close the meeting to the public was made by Mayor Roth and seconded by Mr. Grewal. All voted in favor.

A motion to approve the Application with conditions was made by Mr. Donigian and seconded by Mr. Olear. A roll call of members present revealed 10 aye votes by Mayor Roth, Mr. Crean, Mr. Donigian, Mr. Ervin, Mr. Grewal, Mr. LoIacono, Mr. Olear, Mr. Pallotta, Ms. Jankowski and Ms. Galow.

2. Adoption of the Housing Plan Element and Fair Share Plan as an Amendment to the Mahwah Township Master Plan.

For review and consideration.

Ms. Nylema Nabbie, Esq. of Cleary Giacobbe Jacobs, LLC at 69 Ramapo Valley Road, Upper Level 105, Oakland, NJ approached with Ms. Darlene Green of Maser Consulting at 53 Frontage Rd, Suite 110, Hampton, NJ. Ms. Nabbie introduced herself and explained that she has been a part of the Township's representation in various Affordable Housing litigation cases. Mr. Scandariato asked Ms. Nabbie if she would like to confirm the service of required notifications and subsequently provided the details of these notices and publications.

Ms. Nabbie provided background information on the 2018 Affordable Housing Agreements that the Township had entered into. Ms. Nabbie explained that milestones were set within these agreements. One such milestone was the Housing Element and Fair Share Plan being presented for review. Ms. Nabbie introduced Ms. Darlene Green who would provide an overview of the Housing Element and Fair Share Plan. Ms. Green referred to a three page summary titled "Mahwah Planning Board Meeting Handout | June 10, 2019 (2 pages) (Exhibit-1) and "Affordable Housing Sites" map created by Maser Consulting, and dated October 2018 (Exhibit-2). Ms. Green provided an overview of the timeline and tasks that would be needed to adopt not only these changes to the Master Plan but also the Ordinances that would necessary. Ms. Green discussed how the Township's Affordable Housing Obligation was established. She continued reviewing the summary of the proposed mechanisms outlined in Exhibit-1. This summary outlined the credits (existing Affordable Housing Units) that have already been provided, as well as bonuses that the Township has realized. Ms. Green then reviewed the ways the Township is planning to meet the remaining

obligation. Ms. Green discussed the proposed extension of controls for an estimated 20 units. Ms. Green continued reviewing the following proposed sites:

1. Crossroads - 140 Acres to be rezoned for 58 acres of inclusionary housing, or 800 units; 120 of them Affordable Housing with 30 acres of commercial space and 30 acres of office space.
2. Block 82/Mahwah Town Center - 3.4 acres to be rezoned for 49 units, 20 being Affordable Housing with the maximum density of 14 units to 1 acre.
3. Fyke Road - 5 acres to be rezoned for 35 units, 7 being Affordable.
4. 70 Island Road - 1.05 acres owned by the Township, to be rezoned for a 15 unit Affordable Housing complex.
5. Madeline Senior Housing - 13 Senior Affordable Housing units as Phase II of construction is currently under way.

Ms. Green also discussed the Township-Wide Set-Aside Ordinance that would apply to any new development with five or more units, requiring that 20% of the units be set-aside for Affordable Housing.

Mayor Roth thanked Ms. Green for a tremendous job on her work and the summary provided.

Mr. Donigian asked if the whole property at 70 Island would be developed. Ms. Green replied that the plan is to develop a portion while leaving an area that will be used as an extension of the existing Fire House property.

There was discussion about the value and role of the previous Township Housing Commission. Mayor Roth explained that the administrative portion of the process had been outsourced. Mr. Donigian agreed that this was necessary. Mayor Roth and Mr. Donigian agreed to meet and discuss the possible role of the Housing Commission, who would want to serve on it and what it would look like.

Mr. Donigian questioned the 2025 milestones and possible consequences of not meeting these planned timelines. Ms. Green explained that these are plans and that as things change, reports and modifications to the plan will need to be made. Ms. Green noted that there are “check in” times when the Township will be assessing how these plans are developing and what changes are needed to continue to provide opportunities where these obligated units can be provided. Ms. Nylema emphasized that the timing of these approvals is very important in order to meet the deadlines set to provide this plan.

Mr. Donigian expressed his appreciation for a fabulous job done on the plan and this long process of managing the Affordable Housing Plan. Mr. Donigian expressed his wish that the designated housing was set without an expiration, filling a permanent community need.

Mr. Olear asked what the age restriction was for the senior housing at the Crossroads and Ms. Green replied that she believed it was 55. Mr. Olear asked if any developers were ready to move on these plans. Ms. Green was not aware of any.

There was discussion of the benefits to the Township when controls are extended instead of

creating new units as part of new development.

Mr. Lo Iacono asked if the Township was obligated to make these Zoning changes if this plan is adopted. Ms. Green explained that the obligation was established when the Township entered into the Settlement Agreement.

There was discussion about Block 82 and whether it would be rezoned or if there would be an "Overlay". Ms. Green clarified that the Housing Element and Fair Share Plan document should have read that the Block would be re-zoned. There was additional discussion on how this would impact existing owners in this Block.

Ms. Galow asked if the Crossroad's Developer was obligated to complete the various components of development. There was further discussion on what the Developer would be obligated to complete and what was up to their discretion, all of which is within the Settlement Agreement. Ms. Green did clarify that there was an 800 unit limit that could be built. Subsequent discussion hypothesized on various situations that might unfold.

There was discussion about a \$6,000,000.00 fee for transportational impacts. Ms. Galow referred to a much larger estimated cost defined in a previous application. Ms. Green explained that Townships are restricted in what costs can be passed on to the developer through "cost generative limitations". Ms. Green stated that the \$6,000,000.00 was the largest she has seen a Township receive from a developer.

Mr. Crean asked for more clarification on the proposed Block 82 Zoning changes. Ms. Green explained that the changes would not impact existing uses because those would be considered pre-existing. Ms. Green clarified that the Plan under consideration was not creating the change in Zoning but that an Ordinance would be introduced to implement the required Zoning modifications. There was further discussion on the timeline and procedural steps for the Ordinances.

A motion to open the meeting to the public was made by Mr. Donigian and seconded by Ms. Galow. All voted in favor.

Ms. Audrey Artusio of 214 Miller Road approached. Ms. Artusio asked if the limit of 14 units per acre would apply to all development in the Township. Ms. Green clarified that this density limitation applied to the proposed Zones only. There was discussion about older agreements where Affordable Housing units were shifted to other locations. Ms. Green explained that the Settlement Agreements and Ordinances specify that the Affordable Housing units must be built onsite.

Ms. Artusio read a previous statement from the Planning Board regarding Block 82. Ms. Artusio indicated that the current plan agreed with the previous Board findings except that three stories would now be permitted. Ms. Artusio also discussed the congestion in the area and concurred that a good job was done.

Mr. John Feson of 20 Falcon Court approached. Mr. Fesen suggested that the Township

do a good job notifying the public of what changes are forthcoming.

Councilwoman Janet Ariemma of 6 Mary Court approached. Ms. Ariemma asked what the current Township Affordable Housing requirement is for a developer. Ms. Green stated that the developer would pay the Township a fee that would go into the Affordable Housing Trust Fund. Ms. Ariemma asked what the Toll Brothers did. Ms. Green said the Toll Brothers project did a “payment in lieu”. Mr. Ariemma asked if developers could do that in the future. Ms. Green strongly discouraged any Land Use Board from providing a developer with any relief from the Affordable Housing requirement specified in the agreements. Mr. Scandariato noted that the Planning Board did not have the authority to grant that type of relief.

Mr. Richard De Angelis of McKirdy, Riskin, Olson, & DellaPelle P.C. at 136 South Street, Morristown, NJ, representing Ms. Maureen Postolowski approached. Mr. De Angelis questioned why the Zoning regarding Block 82 was not being done through the use of an Overlay. There was discussion regarding the proceedings history regarding Block 82, Lots 22, 25 and 28 that are owned by his client. Ms. Green said she would go back into the testimony at the Fairness Hearing and look into it further. Mr. De Angelis asked about the purpose of the three acre minimum lot size. Ms. Green discussed the reasoning behind it and suggested that any questions be addressed with the Council when the Ordinances are introduced. There was additional discussion with the Board regarding the use of an Overlay instead of rezoning and whether the Ordinance could be changed.

A motion to close the meeting to the public was made by Mr. Ervin and seconded by Mr. Donigian. All voted in favor.

Ms. Nabbie summarized the process that the Township has gone through and stressed the importance of approving the Housing Element and Fair Share Plan so as not to jeopardize the Settlement Agreements. Ms. Green explained that this agreement does not ensure that development is going to occur but provides the opportunity for developer's to do so. Board Members' discussion about possibly carrying the review resulted in Members voicing confidence in the agreements that have been made and the Council's ability to adjust the Ordinances where/if needed.

A motion to approve and adopt the Housing Element and Fair Share Plan as an Amendment to the Township's Master Plan was made by Mr. Donigian and seconded by Mayor Roth. A roll call of members present revealed 10 aye votes by Mayor Roth, Mr. Crean, Mr. Donigian, Mr. Ervin, Mr. Grewal, Mr. LoIacono, Mr. Olear, Mr. Pallotta, Ms. Jankowski and Ms. Galow.

3. Docket #377A-2 - The RMR Group

725 Darlington Ave, Block 135, Lot 61.03,

Amended Site Plan and Soil Movement Permit Application for construction of a parking addition.

At the start of the meeting, Mr. Crean announced that Docket #377A-2 The RMR Group Application was being carried to the July 22, 2019 Planning Board Meeting, with no further

notice necessary.

VIII. WORK SESSION:

A) NEW BUSINESS:

1. **Review of Proposed Ordinance #1863 – The Township of Mahwah proposed an Ordinance amending Chapter XV Streets, Sidewalks and Sanitation and Section 24-17 Wireless Telecommunications Towers and Antennas of the Code of the Township of Mahwah and Providing for the Regulation of Small Cell Wireless Facilities within the Municipal Right of Way. The Ordinance was introduced by the Township’s Council at the Township’s Council meeting on May 23, 2019.**

There was discussion regarding the Federal mandates for these Ordinances. It was explained that implementing the Ordinance would help establish control.

Mr. Kelly introduced some suggested changes to the wording, definitions and establishing escrow. Mr. Kelly agreed to send the suggested modifications to Mayor Roth.

Ms. Lawlor agreed that the controls are important to establish without creating a burden on the utilities.

A motion to recommend adoption of Ordinance 1863, with suggested modifications was made by Mr. Donigian and seconded by Mr. Olear. A roll call of members present revealed 10 aye votes by Mayor Roth, Mr. Crean, Mr. Donigian, Mr. Ervin, Mr. Grewal, Mr. LoIacono, Mr. Olear, Mr. Pallotta, Ms. Jankowski and Ms. Galow.

Mr. May approached and requested a motion to adjourn the Special Meeting of the Township Council.

B) OLD BUSINESS: None

C) COMMITTEE REPORTS: None

IX. ADJOURNMENT:

A motion to adjourn the meeting at 9:55 p.m. was made by Mr. Donigian and seconded by Mr. Ervin. All voted in favor.

These minutes were prepared by Mary Jo Wood, Planning Board Secretary. The minutes were provided to the Planning Board on August 21, 2019 for approval at the Regular Meeting to be held August 26, 2019.