

**PENNINGTON BOROUGH  
PLANNING/ZONING BOARD MINUTES  
REGULAR MEETING – OCTOBER 14, 2020**

Mr. Reilly called the meeting to order at 7:30 p.m. and announced compliance with the provisions of the Open Public Meetings Act. The meeting was a webinar Zoom meeting and access to the meeting was on the Pennington Borough web site along with the agenda and attachments.

**Roll Call:** Nicholas Angarone, Vice Chairman, Mark Blackwell, Deborah Gnat, Eileen Heinzl, Seung Kwak, Alt. 1, Cara Laitusis, Mayor Joseph Lawver, Katherine L. O'Neill, Douglas Schotland, James Reilly, Chairman.

**Also Present:** Edwin W. Schmierer, Mason, Griffin & Pierson, Planning Board Attorney; James Kyle, KMA Associates, Borough Planner; Mary W. Mistretta, Secretary.

**Absent:** John Flemming, Zoning Officer.

**OATH OF OFFICE** – Mayor Joseph Lawver was given the oath of office for the period – January 1, 2020 – December 31, 2020 for Class I position.

**RESOLUTION CONCERNING REMOTE PUBLIC MEETINGS OF THE PENNINGTON PLANNING BOARD**

Mr. Schmierer explained that in March 2020 the N.J. Department of Community Affairs, Division of Local Government issued guidelines for conducting remote Land Use Board Meetings during the Covid-19 crisis. The Division of Local Government Services is now in the process of codifying those guidelines and incorporating them into the N.J. Administrative Code. The State has directed that the remote public meeting guidelines be formally adopted by Land Use Boards to be in compliance with State guidelines. Mr. Blackwell made a motion to adopt the remote public meeting procedures, seconded by Ms. O'Neill and the Board agreed unanimously by voice vote.

**OPEN TIME FOR PUBLIC ADDRESS** – There was no one from the public on the webinar at this time.

**ERI – ENVIRONMENTAL RESOURCE INVENTORY**

Mr. Angarone, who is also a member of the Environmental Commission, explained that the Commission has been working on developing the narrative for the ERI (Environmental Resource Inventory) and it was recommended that they get assistance from Mr. Kyle, the Borough Planner, for mapping and data. Mr. Kyle stated that the mapping would be extremely helpful to the Board and the document would be adopted as part of the Master Plan. Ms. Heinzl stated that she had reached out to Mr. Reilly to see if it would be possible to use part of the Planning budget for Mr. Kyle's services. She stated that the Commission has been working with an intern, Hailey Grillo, who has been looking at ERI's from other municipalities, but most of them are for much larger municipalities and the Commission members felt that it would be more helpful if the document was more Borough specific. Mr. Kyle submitted a proposal in the amount of \$2,500.00 for mapping and data that would also include things like soil calculations and wetlands. Mr. Kyle stated that the ERI is not a Municipal Law requirement, but it is recommended by ANJEC.

The Board agreed that using Planning funds for Mr. Kyle's assistance with the ERI was appropriate since the document will eventually be part of the Master Plan. Mr. Angarone made a motion, seconded by Mr. Blackwell to use \$2,500.00 from the Planning budget to enable Mr. Kyle to assist with work on the Environmental Resource Inventory. Voting yes: Angarone, Blackwell, Gnat, Heinzl, Lawver, O'Neill, Schotland, Laitusis, Reilly. Not voting: Kwak, Alt. I.

## **VACANT LAND ANALYSIS**

James Kyle, Borough Planner, reviewed the Vacant Land Analysis and RDP Calculations that had previously been distributed to the Board. He explained that the analysis is a tool that is used when a municipality does not have sufficient vacant land to address their affordable housing requirements. They identified and analyzed all vacant Class 1 land and vacant land owned by the Borough to see if they were developable and could be used to meet affordable needs. Mr. Kyle stated that the “realistic development potential” for the Borough is five (5) units per acre. Many of the properties identified on the list are too small, have easements, detention basins or on the fringe of the Borough and are associated with larger lots in Hopewell Township. There are very few parcels of vacant land in the Borough and only three properties that have development potential based on the RDP. Two are on West Delaware Avenue, the old landfill, and a lot adjacent to the rear of the landfill, Block 206, Lot 4 on Broemel Place next to the Pennington Pizza area. Block 206, Lot 4 is approximately 6/10's of an acre and would just meet the RDP standards and would generate 1 RDP. The landfill is approximately 7.5 acres and would generate 75 units of which 15 would be affordable. The only other property that would generate RDP's is located on East Delaware Avenue, Block 403 Lot 33 which would provide 11 units and generate 2 RDP's. At the end of the summary a total of 18 RDP units were identified. Mr. Kyle stated that if we went to Fair Share Housing Center seeking a declaratory judgement we could not address the obligation the Borough would be given and we would have to seek a vacant land adjustment and provide some other zoning options to address our unmet need which would be around 166 units. Fair Share Housing would probably require overlay zoning to address some portion of the unmet need. We have 16 affordable units at Heritage at Pennington and 8 units at Pennington Point that can be applied towards the obligation. No RDP number has been assigned to the landfill since we still do not know if it is developable. Ms. Heinzel stated that Excel Engineering was fairly close to finishing their investigating of the landfill, but additional sampling is still needed. Mr. Reilly had questions regarding the overlay zoning and Mr. Kyle stated that they would be inclusionary overlays that would go over office buildings. The only other properties that could be looked at are owned by The Pennington School and the Senior Center. Mayor Lawver asked if the Board of Education building was considered and would it be a builders' remedy risk. Mr. Kyle stated that it was not looked at since it is owned by the School Board which is a public entity other than the Borough and we are not required to include it in the vacant land. There is quite a bit of land on that property and if they were to sell the property it would be at risk for a builder's remedy. Ms. Laitusis asked about the lot next to it. Mayor Lawver stated that it is owned by the Borough and is landlocked. Mayor Lawver also asked what percentage of the unmet need would be covered by overlay zoning. Mr. Kyle responded that Fair Share would probably want us to create some on Route 31, but our options are limited and they would probably provide only 25 or 30 units of our unmet need.

Ms. O'Neill asked Mr. Kyle if he could clarify overlay zoning. Mr. Kyle explained that an overlay means we are going to provide another development option for that property and it would be an overlay to the present zoning. The present zoning stays in place and an affordable housing zone of some type is placed over it. It provides two options for the property and if someone wanted to provide an affordable option they could do it. Ms. Heinzel asked what if a property is zoned with an affordable overlay and the Borough does not put affordable housing on the lot. Mr. Kyle responded that it is the Borough's obligation to create the opportunity to provide affordable zoning, but not to ensure that it is built. Mr. Angarone questioned the calculations used and Mr. Kyle responded that he calculated 10 units per acre. Mr. Angarone had questions regarding the unmet need numbers and Mr. Kyle pointed out a table shown in his proposal dated April 5, 2019 that showed the Borough's prior unmet obligation was 52 which covered the period from 1987-1999 and that is a set number. He explained the methodology used by Fair Share and Judge Jacobsen relating to the decision regarding West Windsor and Princeton.

Based on Judge Jacobsen's methodology, the number which included 52 - prior round, 70 - rehab obligation, gap need (1999-2015) - 72, Third Round (2015-2025) – 62 which totaled 186 units. Mr. Kyle felt this number was higher than what FSHC calculated, since they offered to discount the period covering 1999-2025 by 30% which would reduce the Borough's obligation to 181. Mr. Kyle stated that we would have to have discussions with FSHC to see what they would like us to do. Mr. Angarone asked if the Senior Center was moved would it need an overlay to consider it for affordable units. Mr. Kyle stated that it is not vacant land, but it could be considered for an affordable overlay even if the center stays there. He suggested trying to get a provider to construct two dwelling units or a group home. Ms. Laitusis asked about the smaller lots that were owned by LLC's and Mr. Kyle responded that most of these lots are small and part of lots in the Township. Ms. O'Neill pointed out land owned by the Pennington School on the east side of Green Street. She noted that they had a lot on N. Main Street that went back to vacant land that she thought would be feasible for affordable dwellings. Mr. Blackwell pointed out that there is a ditch that runs down toward the brook and there is a steep incline.

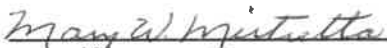
Mr. Schmierer commended the Board for starting to look into addressing its affordable obligation. He stated that most of the larger municipalities have been settled at court and their plans are starting to be implemented. He stated that Fair Share will now start looking at the smaller municipalities. He felt that the Board should continue to identify properties and once the landfill study is done they will be in a good position and could do an overlay and be ahead of the curve and moving in the right direction. At this point, no action needs to be taken.

Ms. Heinzel informed the Board that M.J. Sweetman was attending the meeting. Mr. Reilly asked Mr. Sweetman if he wished to comment or had any questions for the Board. Mr. Sweetman stated that he lived at 1 East Welling and was wondering if the open space would have a potential impact on his neighborhood and he was interested in the proceedings.. Mr. Kyle stated that it would not have an impact on his neighborhood as most of the properties bordered Hopewell Township or were by the stream.

**MINUTES** – Ms. Gnatt made a motion to approve the March 11, 2020 minutes, seconded by Ms. Laitusis and the minutes were approved by voice vote. Mr. Reilly mentioned that the Application Review Committee has been interrupted by the pandemic, but they will be having a meeting to review the annual report to see if they have any recommendations.

Mr. Angarone made a motion, seconded by Ms. Laitusis to adjourn the meeting and the meeting was adjourned at 8:35 p.m.

Respectfully submitted,



Mary W. Mistretta  
Planning Board Secretary