

**PENNINGTON BOROUGH  
PLANNING BOARD MINUTES  
REGULAR MEETING  
April 10, 2019**

Mr. Reilly called the meeting to order at 7:30 p.m. and announced compliance with the provisions of the Open Public Meetings Act.

Roll Call: Deborah Gnat, Eileen Heinzl, William B. Meytrott, Katherine L. O'Neill, Anthony Persichilli, Alt. 2, Douglas Schotland, Winn Thompson, James Reilly, Chairman.  
Absent: Nicholas Angarone, Vice Chairman, Mark Blackwell, Cara Laitusis.

Also Present: Edwin W. Schmierer, Mason, Griffin & Pierson, Planning Board Attorney; John Flemming, Zoning Officer; James Kyle, KMA Associates, Planner; Mary W. Mistretta, Secretary. Absent: Brian Perry, Van Note-Harvey Associates, Planning Board Engineer.

**OATH OF OFFICE** – Mr. Schmierer gave the following the Oath of Office:  
Deborah Gnat, Class III, Council Representative for the term 01/01/2019 – 12/31/2019  
Anthony Persichilli, Alternate 2, for the unexpired term 01-01-2019 – 12-31-2019

**OPEN TIME FOR PUBLIC ADDRESS** – Mr. Reilly asked if there were any comments or questions from the public that were not on the agenda, there being none the public address portion of the meeting was closed.

**ZONING OFFICER**

Mr. Flemming reported that the Exxon Station on the corner of Route 31 and West Delaware Avenue has turned off their chasing lights located in the windows and would like to keep them in the window in one color. Mr. Flemming stated that the ordinance did not prohibit this, but he did want to visit the site at night. They have also taken down some temporary signs.

Mr. Flemming stated that Mr. Reilly had asked him to address the Mercer Mutual building on Route 31. He stated that he was not sure what was going into the building. He was informed it would be medical offices, but by their nature they could include anything in the medical field. He feels a review by the Board would be prudent to know specifically what types of medical offices would be in the building as it is a much different use than Mercer Mutual. Mr. Flemming stated that he has only had an initial conversation with them and he may change his mind after they come to him with more information. Mr. Thompson stated that the biggest issue with the property would be the parking, as medical offices would probably need more parking than what was needed for the previous offices in the building. Mr. Reilly stated that he received a phone call from a person representing the group and felt that he should report it to the Board. He stated that he did not initiate the call and it was from a neighbor Rachel Donington who indicated that she was representing the group that was looking into this. She stated that the use would be a neuroscience institute and possibly a primary care medical office which would have physicians available for consultations, but no procedures would take place. Mr. Reilly felt that in the interest of full disclosure he should report the conversation to the Board and stated that he suggested that she consult with the Zoning Officer and the Board Secretary. Mr. Flemming stated that he would recommend that they come in to the Board with a Conceptual application. Mr. Flemming reported that he was getting calls and complaints about a new house on Laning Avenue and a majority of the calls were about the height of the building. He stated that the owners engineer was looking into it, but he did not have any information at this point. (Mr. Flemming left the meeting.)

### **JAMES KYLE – PROPOSAL FOR FAIR SHARE PLAN**

At the request of the Board at their March 13<sup>th</sup> meeting, James Kyle, Borough Planner, prepared a proposal to assist the Board and Council with the Borough's affordable housing plan. Mr. Kyle reviewed the proposal for the Board and stated that the first step would be to determine the Borough's affordable housing obligation which will form the basis for settlement with the Fair Share Housing Center (FSHC). Mr. Kyle included a summary of obligations as calculated by FSHC and Econsult Solutions Inc. (ESI). The ESI numbers were based on the methodology that Judge Jacobsen previously used in her decisions related to West Windsor and Princeton. Using this methodology they calculated that the obligation of the Borough would be 186 and the Fair Share numbers are in line with that number. Mr. Kyle stated that he was surprised that the number was so high. He mentioned that in general, as part of the settlement process, FSHC has offered to discount their calculated obligation by 30%. Mr. Kyle stated that the Borough would have to come up with ways to address at least part of the obligation. The rehabilitation obligation is basically identifying substandard housing units within the Borough that are occupied by low and moderate income households. There are minimum amounts of money, \$10,000 – 12,000 per unit, that would be used for the rehabilitation of a single family dwelling or multi family unit. A structural condition survey could be done in the Borough by the building inspector or some other licensed inspector. The results of the survey could possibly help reduce the rehabilitation number. The Board agreed with Mr. Kyle that the rehabilitation number of 70 was way overstated. The Borough is permitted to utilize up to 20% of its affordable housing trust fund for administrative purposes which includes preparation of the affordable housing plan and the inspection would be considered preparation for the plan.

Mr. Kyle stated that one of the first things he would do is a vacant land analysis which would not take long since there is not a significant amount of vacant land in the Borough. There is not enough vacant land to fully address the affordable housing obligation and an adjustment would be requested based on the analysis. The analysis would show the Borough's "realistic development potential" or RDP and what is leftover is termed "unmet need." The Fair Share Housing Center does not make the municipality zone for all the unmet needs, but they want to see that a portion of it is addressed through either redevelopment areas or overlay zoning. The Borough's only obligation is to address the RDP with actual mechanisms and address a portion of the unmet needs. Mr. Kyle feels that by doing this after the land analysis it will give the Borough a basis to go to the Fair Share and start discussions about the realistic numbers. Mr. Kyle stated that through his work as a Court Master he has become familiar with the staff at Fair Share which should help in the process. He stated that once we are through the settlement process with Fair Share Housing Center and we have a signed agreement with the numbers it should be a fairly easy process. We would then go to Judge Jacobson for her determination that the settlement is fair and that is usually a routine process. The next part of the process would be compliance and it would take approximately four months to prepare the Housing Plan Element and the Fair Share Plan which identifies our mechanisms. Mr. Kyle described the process of preparing the Fair Share Plan which is very detailed and is outlined in the proposal. A revised Spending Plan would also have to be included in the Fair Share Plan.

Mr. Kyle stated that he has given lump sum figures in his proposal which are based on their prior experience preparing plans rather than hourly rates. Mr. Kyle stated that they would be willing to charge by hourly rates if that was preferred. Mr. Reilly asked if this would include the entire project or just the Fair Share Plan and would the other expenses vary according to how long they take. Mr. Kyle responded that tasks 1 and 2 could vary and he did not expect that they would exceed the numbers given. If a task goes much quicker than he expected it could cost less and he feels that the vacant land analysis will probably be lower. The only

other costs that may vary is meeting attendance. The fixed amounts would be the Housing Plan Element and the Fair Share Plan. Ms. Heinzl asked if the Borough designated certain properties for redevelopment, could a developer come in with a builder's remedy for that property. Mr. Schmierer stated that having areas designated as redevelopment areas would not give protection from a builder's remedy as it is only considered super zoning. Ms. Heinzl asked how many towns have come forward with a proposal to settle that were not part of the litigation. Mr. Schmierer stated that at last count there have been about 265 or so towns that have settled. In Mercer County most towns start with Judge Jacobson's numbers and the discount and then came up with settlements with the Fair Share. Except for the smaller towns that opted out of the litigation, the only town that has not settled is Princeton. Mr. Schmierer feels that the Fair Share will be reasonable in trying to work something out, as they will recognize that the 186 affordable units of housing cannot be accomplished in the Borough. Mr. Schmierer stated that now that most settlements have been made the Supreme Court has clearly told the Mt. Laurel judges in each municipality to get the final cases settled. Mr. Schmierer agreed with Mr. Kyle that the Borough should be pro active and prepare a plan before Fair Share comes to us or a developer comes and files a law suit at which point the Borough would then have to do the same work for defense. Mr. Schmierer feels that the Borough has sat out as long as they can and it would be prudent for the Board to recommend approval of this proposal to the governing body. He also felt that the Borough should accept the lump sum rather than an hourly fee as these things never run as smoothly as you expect them to. Mr. Reilly asked if a developer can come in with a builder's remedy once we have an agreement, but the units do not exist. Mr. Kyle stated that the minute the Borough starts the process of negotiations with Fair Share we would ask for temporary immunity. Once we have the fairness hearing that immunity is extended further until the point when we have a plan and once the plan is prepared and we get a judgement we are protected until 2025. Mr. Schotland asked if this process would just give us a number or would it target actual properties. Mr. Kyle stated that the Fair Share Plan would identify sites that we would either zone for development or change zoning, but the RDP (realistic development potential) would be the driving factor in the Borough's case. There was discussion regarding the rehabilitation program. Rehabilitation can be done to single family homes or multifamily units. It would have to be determined if they would qualify for low or moderate and \$20,000 – 25,000 would be given for rehabilitation and a deed restriction of 10 years would be required. An accessory apartment program could also be identified where an apartment could be constructed over a garage or other area that qualified. Ms. Heinzl asked what would happen in 2025 if we have not been able to fulfill our need. Mr. Kyle stated that once your established RDP is known that is the number unless something dramatic changes, The obligation is to put zoning in place to give someone the opportunity to create affordable housing. Mr. Kyle stated that at the end of this period there will probably be a round four, but we would be able to rely on the land adjustment going forward and the RDP will not necessarily change. Mr. Thompson asked how long the process would take if Borough Council approves the proposal. Mr. Kyle stated that his guess would be about 2 months from the start until we get a signed agreement and a fairness hearing scheduled. There is usually 120 days from the day of the order to get the plan and ordinances prepared and adopted.

Mr. Reilly asked if there was anyone in the public who had comments or questions.

Dan Pace, 9 Railroad Place, stated that there was a lot of open land in the Borough which is owned by private institutions like playing fields and parking areas and asked how these would fit into a vacant land analysis. Mr. Kyle responded that if he could document that those areas are associated with the Pennington School or some other organization that owns them privately the land would not be considered in the analysis. Mr. Pace also pointed out the fields behind the Board of Education's Administration Building and Mr. Kyle stated that lands affiliated with the school district would not be considered. They are usually looking at land owned by the Borough itself. Land encumbered under Green Acres is also not included in the

analysis. Lots under a half acre are usually not included in the calculations because they cannot support enough units, six units per acre is the magic number.

Ms. Heinzl stated that the Environmental Commission has been working on an environmental resource inventory and asked if the vacant land analysis will help them put this together. Mr. Kyle stated that they will probably be looking at some of the same environmental factors and he agreed that the analysis could become part of their inventory.

There being no further comments, Mr. Reilly closed the public comment section.

Ms. O'Neill made a motion, seconded by Ms. Gnatt to recommend to Borough Council that they approve Mr. Kyle's "Scope of Work and Proposal for Affordable Housing Work" to be paid for from the affordable trust fund. Voting yes: Gnatt, Heinzl, Meytrott, O'Neill, Schotland, Thompson, Persichilli, Reilly. Voting no: none; Absent: Angarone, Blackwell, Laitusis. Mr. Reilly asked that the proposal be forwarded to Borough Council with a cover memorandum requesting that it be placed on the May 6<sup>th</sup> Borough Council agenda.

Mr. Reilly announced that Mr. Angarone could not attend tonight's meeting and the discussion regarding "Sustainable New Jersey" is postponed until a later date.

Ms. Heinzl reminded everyone about the community wide yard sale to be held on May 4<sup>th</sup>.

**MINUTES** – Ms. O'Neill made a motion, seconded by Mr. Meytrott, to approve the minutes of the March 13, 2019 Planning Board meeting with the suggested additions.

Mr. Reilly announced that there would be a brief Application Review Committee meeting after the Planning Board meeting. He also announced that there would be a Planning Board meeting on May 8<sup>th</sup> as we have a conceptual application

Mr. Thompson made a motion, seconded by Ms. Gnatt to adjourn the meeting. The meeting was adjourned at 8:40 p.m.

Respectfully submitted,

---

Mary W. Mistretta  
Planning Board Secretary