

March 18, 2010

A combined work and regular session of the Allendale Planning Board was held in the Municipal Building on March 18, 2010. The meeting was called to order at 8:10 p.m. by Chairman Quinn, who announced that the requirements of the Open Public Meetings Act were met by the required posting and notice to publications.

The following members answered roll call: Mr. Quinn, Mr. Fliegel, Mr. Barra, Mr. Bernstein, Mr. Sirico, Ms. Sheehan, Mr. Zambrotta, Mr. Sasso and Mr. Walters. Also present was Mr. Dunn, Board Attorney. Mr. Herndon and Mr. Yevchak were absent.

Mr. Dunn administered the Oath of Office to Mr. Sasso, who was recently appointed to the Board.

On a motion by Mr. Sirico, seconded by Mr. Zambrotta, the minutes of the work session of January 18, 2010 and the regular session of February 18, 2010 were unanimously approved as submitted.

Discussion & action on resolution Re: Proposed "Time of Decision" legislation (Senate Bill S-82)

Mr. Dunn said this pertains to what is called the "Time of Decision" rule which says that if a person comes in before the Planning Board or Board of Adjustment and applies for a use that the town had not considered in its previous history or its master plan or zoning ordinances, under ordinary circumstances pursuant to this rule, a town has an opportunity once that application is presented and while it is pending to change its zoning ordinance to close a loophole or to address unforeseen conditions or state that it did not have the opportunity to deal with it under its master plan or zoning ordinances previously. That opportunity to address that issue by the Borough would continue until such time as the application for development before a land use board was approved at which time the rights would become vested in the applicant if the town thereafter wanted to change its ordinance. This rule is not a statutory rule. It is a common law rule and basically enforced by the Courts and generally applied in cases like this and has been for many years. There are bills pending before both the Senate and the Assembly. It is his understanding that the Assembly has passed its version. It would essentially do away with the "Time of Decision" rule and say that henceforth, when an applicant comes in with the odd application or use or intended development that was not contemplated by the town and that the town might have an issue with that once the applicant applies and presents his application to the Board, then his rights are fixed so the town has no opportunity to correct oversights. This is a builder's group proposal because of current economic conditions. Mr. Dunn said these types of proposals are met with more favor now in the legislature and this one stands a pretty good chance of approval.

Mr. Dunn said the League of Municipalities has sent around notices to the municipalities to take action. He has prepared a resolution for another municipality opposing this legislation and he can prepare one for the Borough of Allendale if it sees fit.

Mayor Barra said the bill has passed both houses but it hasn't been signed as yet by the Governor. The League is urging municipalities to write to the Governor to suggest that he veto this legislation.

Mr. Dunn said basically the position of the builder's groups is that the regulatory framework within which they have to deal in the State starts with land use boards and local officials, not excluding county and state regulatory authorities making the cost of development in New Jersey extraordinary. They feel it is not fair to have them go through months and months of legal and engineering work for presentations and find out that at the last moment they are often sandbagged with fixes to zoning ordinances that really should have been foreseen and were really introduced for the purposes of obstruction.

Mayor Barra said that as far as he is concerned, once somebody submits an application, he ought to be bound by the law as it exists at that time. However, if an applicant has just submitted an application and it has not been deemed complete or he has not started the process, then he should be bound by whatever changes take place. Mr. Walters agreed. Mr. Quinn said as a matter of fairness, he believes that would be the right time to start the clock.

Mr. Barra asked if everyone agrees with the principle that once an application is deemed complete, it should be bound going forward with the existing laws and ordinances as of that time and not any prospective ordinances that then pass.

Mr. Bernstein said he agrees but there could be an issue that a Council or Planning Board was not cognizant of and then realizes that there is a possible interpretation of the code that no one had intended. He does not believe the town having to live with that is for the greater good. An astute builder could say the town did not fix their ordinance allowing him to build something that really was not intended. He doesn't want the town to rule and decide on the code as it existed if it was not what was intended and the intent was to clear up the misconception or ambiguity.

A Board member said that in his opinion this is a bad thing and although a protest or resolution by the Board may be symbolic, some residents may later say the Board should have at least tried to do something. He added that anything that removes control from the Mayor and Council or this Board or from the town is not a good thing in his opinion.

Mr. Quinn said in his view the clock would start at the time the application was deemed complete.

Mr. Dunn said he does not think the Borough has changed ordinances while things have been pending. Mr. Barra said laws change all of the time but it is a question of whether an application was filed before the law changed or after.

The Board agreed to send a resolution to the Governor in opposition to the proposed legislation to eliminate the Time of Decision Rule.

The meeting was opened to the public for comments and there being none, the meeting was closed to the public.

Resolution was introduced by Mr. Walters and seconded by Mr. Barra. All Board members voted in favor. (See copy of resolution attached and made a part hereof)

Discussion – Master Plan Review

Mr. Snieckus said that tonight he will discuss the adjustments and revisions that the Board has made to the Open Space and Recreation Plan and the Sustainability Element in an effort to tie up the draft form of this document. Once the Board agrees on the final form of the document, they can also amend and adjust the re-examination report that has been discussed at earlier meetings. He wants to tie in some of the goals and objectives that are outlined in the Sustainability Element and the Open Space and Recreation Plan into the actual re-examination report and make it a concise and interrelated document. In addition to that, the master plan re-examination report should reflect the latest and greatest housing plan and its recommendations as a component of the main master plan.

Mr. Snieckus recommended that following the final form of the Recreation and Open Space Plan and the Sustainability Element that the Board advertise for the public to come and hear a presentation. He would like to get the Board's feeling of whether both can be covered in one night. He added that probably the Open Space and Recreation Plan will get the most input from the public. The Sustainability element can be scheduled for the same night and carried if necessary. He does not know the current status of the housing element. He asked the Board what are the next steps for the housing element.

Mayor Barra said he received an email from Mary Beth Lonergan. He sent her the dates of the Planning Board meetings as she requested. Based on those dates, she said the master plan amendment will be done and put on file no later than April 5 to be presented at the regular April 15 meeting for adoption. Subsequently, the governing body will have to endorse the plan amendment by resolution at its meeting on April 22. He should have the amendment for review by March 29. She asked if she will be needed to come to the April 12 work session to discuss the plan amendment and if she should meet with the subcommittee before that date.

Mayor Barra said basically the amendment is eliminating the Episcopal Church and Hillside school property, the former farm property on Arlton from 40 townhouses to just residential zoning, the Orchard Commons change from 24 townhouses to 6 special needs, the Roberts house added as a special needs house, Foreit property added with both special needs and for sale units. Mr. Quinn suggested that Ms. Longergan should come to the Monday work session to explain it and maybe the Board will be able to go through it more quickly on Thursday. Both the Mayor and Mr. Quinn felt she should be present both nights. Mr. Dunn commented that the plan should be available to the public at Borough Hall and notice has to be given at least 10 days prior to that. Mr. Barra said we should probably invite the Council to at least one of the meetings.

Mr. Snieckus said he recalls that the Board wanted to have the Chamber of Commerce present when the central business district is discussed. He said his feeling is the Board should keep the housing plan separate. Mr. Fliegel asked what are the required elements of the master plan. Mr. Snieckus said the housing element, the land use plan component and the master plan itself. Mr. Fliegel asked if the housing plan, the land use plan and the overall master plan is what is required

in the re-evaluation that has to be done this year. Mr. Snieckus said the housing element is separate and distinct. The open space element is a separate document that comes under the umbrella of the master plan.

Mr. Quinn said it seems that the plan is that the housing element will be covered at the next meeting with the sustainability and open space after that. He reiterated that he would like to get the view of the Chamber of Commerce on the master plan before it is finalized.

Mr. Snieckus said his office had prepared a central business district document for other municipalities and it is something that was not included in this analysis. What he would like to do at least as a minimum is include in this report the land uses that are permitted in the central business district and options for improving economics within the district such as consideration for other zoning provisions that would allow greater density or intensity of use. This could be adopted as a separate element of the master plan at a separate time. A Board member asked for a ball park figure on the cost of such a study. Mr. Snieckus said the cost would be about \$3000-\$3500. He added that a circulation study or traffic element would be an additional service. That would be done in conjunction with the Borough Engineer because of issues such as road widths, etc.

A Board member asked if there would be any value in looking at the five master plans of the towns that border Allendale and their impact on us. Mr. Snieckus said that is a required component of the re-examination report.

Mr. Quinn same the game plan seems to be housing next with sustainability and open space in May and then June for the master plan itself and any other things that need to be addressed.

Mayor Barra said he will advise Ms. Lonergan to be present for both sessions in April. He will also invite the Council members and the Board of Adjustment as well. Mr. Snieckus said he will be available on the 15th and the 12th as well if he is needed.

Mr. Snieckus said this evening he wanted to discuss the open space and recreation plan that he passed out to the Board this evening. He informed the Board that he met with Councilwoman Wilczynski about the sustainability element. She met with the Allendale Recreation Committee and they provided their input. At the request of the Board he has tried to make the document more general. The private recreation components have been removed from the open space inventory at the request of the Board. Mayor Barra commented that Guardian Angel Church was listed at 13.5 acres while there is probably only ½ acres of land that is dedicated to field use. The remaining acreage is church property.

Mr. Snieckus said the recreation analysis talks about the specific needs and some of the concerns of the recreation organizations such as the over-use of some of the fields. He said that Councilwoman Wilczynski told him the Recreation Committee is concerned because the need for artificial surfacing is not identified. He said a master plan should identify the need but not get too specific. He asked if lighting for nighttime play should be included or excluded. A member asked what would be the concern of leaving it in. Mr. Snieckus said someone might believe it is a directive of the document and it is being promoted. On page 46 under "Recreation

Analysis”, it was determined that the first two sentences should remain with the balance of the paragraph eliminated. Mr. Snieckus said the Board may not want to leave in the comments and recommendations section in Table 6. He said the ARC has this documentation which they could use for their purposes. The Board agreed that this section could be taken out.

Mr. Snieckus said it is common for a recreation element to have some dialog with regard to the amount of use the fields are getting. This may be a benefit if you are seeking grant funds to assist with repairs or improvements. Mr. Bernstein felt this statement could be ambiguous. He is in favor of it if it puts us in a better position for grants, but he would like to tailor it for that need. He could modify the sentence to read that alternatives need to be considered in order to improve recovery times for turf playing fields.

Mayor Barra said the goal of this board with the master plan is to identify the fact that we have a lot of kids playing a lot of sports in Allendale and probably not quite enough fields. The Board’s function is to identify the issue or goal and all of the charts are great for the sports committees.

With regard to the sustainability element, Mr. Snieckus said at the last meeting there was a concern about the document being too specific. He said the intent of this plan is to establish guidelines for future improvements and policies and to establish a balance between the needs of the community and the desire to achieve sustainability. Page 6 lists targets for transportation such as using vehicles with greater fuel efficiency. Page 7 lists targets for energy efficiency and green buildings. Page 8 discusses the possibility that Allendale will study the feasibility of potential energy savings by turning off street lights in some areas of town. Mr. Snieckus said he would like Chief Herndon’s viewpoint on this subject. Mayor Barra said PSE&G has a program whereby some of our towns have started changing their light bulbs for more energy efficient ones. He added that Chief Herndon is not in favor of shutting off lights anywhere in town because he feels it is a safety consideration.

Mr. Snieckus continued to enumerate other items in this element. He said he will make the changes that have been recommended by the Board. He said as he understands it, there will be a review of the final draft in May.

Mr. Quinn said he had asked Mr. Dunn to draft some language for the potential referral of items to the Planning Board from the Construction Code Official. He asked the Board members to look it over so it can be discussed at the next meeting. Mayor Barra suggested that the document be referred to Mr. Wittekind for his input. Mr. Dunn added that it should probably be reviewed by the Land Use Committee.

On a motion by Mr. Barra, seconded by Mr. Zambrotta, the meeting adjourned at 11 p.m.

Respectfully submitted,

Barbara Knapp