

BOROUGH OF FAR HILLS
Planning Board Regular Meeting
MINUTES
July 1, 2019

CALL TO ORDER

Chairman Lewis called the meeting to order at 7:05 p.m. at the Far Hills Municipal Building and read the open public meetings statement in accordance with the law.

PLEDGE OF ALLEGIANCE

Chairman Lewis led the Pledge of Allegiance.

ROLL CALL

Present: Cheryl Devine, Marilyn Layton, Vice Chairman Tom Rochat, Debra Ross, Councilwoman Sheila Tweedie, Mayor Paul J. Vallone, MD, Kevin Welsh, Chairman Robert Lewis

Absent, as Excused: John Lawlor, Gerrie McManus

Absent:

Also Present: Board Attorney Susan Rubright, Borough Planner David Banisch, Borough Attorney Joseph Sordillo, Acting Planning Board Secretary/Borough Clerk Dorothy Hicks and Officers Chris Merkle and Daryl Zavala and approximately 75 members of the public.

BILL LIST

Motion by Ms. Ross, seconded by Councilwoman Tweedie that the July 1, 2019 Bill List be approved.

Roll Call:

Aye: Ms. Devine, Ms. Layton, Mr. Rochat, Ms. Ross, Councilwoman Tweedie, Mayor Vallone, Mr. Welsh, Chairman Lewis

Nay:

Abstain:

Motion Carried.

APPLICATION/PUBLIC HEARING

2M ELECTRICAL CONTRACTORS, LLC – 49 ROUTE 202 – B15 L1.01 – CHANGE OF USE & OCCUPANCY – BUILDING #1, SUITE #2

Ms. Rubright swore in Mr. Anthony Melillo, Managing Partner of Melillo Equities.

Mr. Melillo indicated that due to a vacancy by The Red Toad Boutique, he was seeking a change of use and occupancy for a new tenant, 2M Electrical Contractors, LLC. He stated 2M Electrical Contractors, LLC provides electrical design services for both residential and commercial uses and would be operating six (6) days a week, between 8:00 am to 6:00 pm and would have five (5) employees. He indicated that there would be four (4) signs which would be relabeled utilizing the existing signage from the prior tenant.

Mr. Banisch stated, as indicated in his 7/1/19 memo to the Planning Board, that the former occupant of Suite 2, The Red Toad Boutique received a change of use and occupancy approval for a women's clothing

boutique in February, 2017 and a sign variance approval for a blade sign in August, 2017. The signage for the business consists of the following:

1. One (1) oval “blade sign” mounted above the front door facing Route 202, which exists and is to remain;
2. Three (3) decal signs mounted within the three transom windows facing Route 202;
3. One (1) business identification sign in the main directory sign for the site at the Route 202 driveway to the site; and
4. One (1) identification sign not visible from the public road behind the building on site.

Mr. Banisch also indicated that the 2M Electrical Contractors, LLC change of use and occupancy application identified 1,561 square feet with 90 existing and proposed parking spaces; noting that the site had previously received site plan approval and parking variance relief. A parking calculation previously provided for the site indicates that a total of 163 spaces are required vs. 90 spaces existing.

Mr. Melillo was asked to respond to the adequacy of parking relative to the proposed use. Mr. Melillo stated that they manage the available parking spots in conjunction with the hours of the tenants and confirmed that the spaces that were previously reserved for The Red Toad Boutique would now be utilized for 2M Electrical Contractors, LLC and the parking signs would be relabeled.

Mr. Banisch recommended the Board should condition any approval granted on the maximum number, size and placement of signs being the same as previously approved for the prior tenant, and would remain the same and only be relabeled for the new tenant. He further recommended that the Board should condition any approval granted upon approval of any other agency with jurisdiction.

A brief discussion ensued regarding the prior blade signage resulting in Mr. Banisch indicating that a separate application was submitted to the Planning Board and a variance was granted for the use of a 24”x 30” oval blade sign on August 2017 and memorialized on September 5, 2017.

Ms. Rubright inquired as to the number of expected customers and if there would be any commercial vehicles with advertising parking at the location.

Mr. Melillo estimated fewer than two (2) customers at a time and affirmed that there would be no commercial vehicles with advertising parking at the location. Mr. Banisch inquired if he would accept that as a condition of approval. Mr. Melillo responded affirmatively.

There being no further questions from the Board, Chairman Lewis opened the meeting for public comment. There being none, Chairman Lewis closed the public portion of the meeting.

Motion by Councilwoman Tweedie, seconded by Ms. Ross that the application with the noted conditions be approved.

Roll Call:

Aye: Ms. Devine, Ms. Layton, Mr. Roach, Ms. Ross, Councilwoman Tweedie, Mayor Vallone, Chairman Lewis

Nay:

Abstain: Mr. Welsh

Recused:

Motion Carried.

Chairman Lewis inquired as to the status of the resolution for the Welsh Variance application in which the public hearing was held at the June 3, 2019 Planning Board meeting.

Ms. Rubright indicated that, due to time constraints, she was unable to prepare the resolution for tonight's meeting but sought authorization from the Planning Board to allow her to prepare a letter to the Borough Construction Official. The letter would indicate that the application was approved and the memorializing resolution would be adopted at the August 5, 2019 Planning Board meeting and that there were no concerns with the issuance of the construction permits.

Motion by Ms. Devine, seconded by Councilwoman Tweedie that the Board Attorney be authorized to prepare a letter to the Borough Construction Official indicating the Board's approval of the Welsh Variance application with the memorializing resolution to be adopted at the August 5, 2019 Planning Board meeting and that there were no concerns with the issuance of the construction permits.

Roll Call:

Aye: Ms. Devine, Ms. Layton, Mr. Rochat, Councilwoman Tweedie, Mayor Vallone, Chairman Lewis

Nay:

Abstain: Ms. Ross, *absent at public hearing*

Recused: Mr. Welsh

Motion Carried.

MAYOR'S STATEMENT ON AFFORDABLE HOUSING

Mayor Vallone read a statement previously presented at the June 24 , 2019 Borough Council meeting.

Ladies and Gentlemen –

Tonight I want to say a few words about the ongoing discussions we have had regarding our State Supreme Court mandated COAH obligations.

Over the last several months, I and the Council have been looking into another possible option to satisfy our obligations, that is working with a builder, which I and the Council explored several years ago as well, in this case, the RPM Development Group (RPM) and having the Borough contribute some portion financially. On a parallel track, we have reached out to the Court and Fair Share Housing Center (FSHC), as we are required to do and our Borough Attorney, Joe Sordillo met with the Court, Judge Miller and FSHC approximately two weeks ago.

RPM, like any other builder who builds affordable housing in the State of NJ obtains much of their money for funding from a State fund, which has limited resources. The builder requires a partnering municipality to contribute funds, in our case after some discussion, the costs included: all the sewer connection fees; all water hook-up fees; a give back incentive of approximately \$750,000.00; any cost over-runs exceeding \$235,000.00 per unit and as the builder estimates \$250,000.00-\$300,000.00 per unit, and in our case, an additional cost for any and all ground improvements.

Our discussions over the last few weeks indicate that our cost as a Borough would be somewhere between \$8.5 - \$10 million which, and as my newsletter of May 2019 outlined, would seriously impact our financial viability.

About two weeks ago, our Borough Attorney and Borough Planner had a meeting with Judge Miller and attorneys representing FSHC and the outcome, which Mr. Sordillo relayed to the Borough Council, was not in our favor. Firstly, the Court will grant no more time extensions and wants our Court approved plan

to move forward expeditiously. Moreover, the attorneys for FSHC, who have worked with RPM and pretty much all of the other builders of affordable housing throughout the state of New Jersey, have stated that they will vigorously oppose any plan requiring a builder working in Far Hills to try and obtain reimbursement funds from the state of New Jersey and will in fact, impose even stronger requirements on Far Hills if we choose to go down that path.

This means that we as a Borough, will have to shoulder the entire cost of building these units, making this a complete self-build project with a total cost of over \$20 million. Keep in mind, RPM will not build any project less than 50 units. The breakdown consists of the following: \$275,000.00 per unit multiplied by 56 units totaling \$15.4 million, \$3.4 million for sewer connections, \$1.5 million for water, and \$1 million for infrastructure and drainage. This does not include any professional fees or any cost overruns that we may encounter. This would surely financially devastate Far Hills for years to come with a debt service of over one million dollars a year for the next twenty to twenty-five years.

In short, with the Errico Acres project, we have a Court approved plan that satisfies our COAH requirements, it costs Far Hills no financial outlay, maintains our low taxes, is deeded age-restricted age, is income positive for the Borough and will architecturally assimilate into our Borough's landscape and this body will have much to say about the construction and the facade appearances.

Moreover, and most importantly, it is supported by FSHC, the Courts and the Court Independent Special Master who have reviewed our options. As such, the full Council fully supports this plan for the Borough of Far Hills. The Court and FSHC will be monitoring our progress and has instituted a strict timeframe to complete this process. Our Borough Attorney will be reporting to the Court regularly addressing the requirements that have now been placed upon us.

I and the Council in no way want to jeopardize our positive position with the Court and be subject to a Builder's Remedy lawsuit, wherein a builder can build what they want and almost as many units as they want. To be sure, 400 units on Errico Acres is certainly a possibility and for those who think it cannot happen, just look to the Hills in our neighboring municipality.

The Council and I have worked very hard to avoid this as it would severely impact Far Hills as we know it. Remember that 25 years ago, the Borough wrestled with the same issue as the Polo Club was about to be built. That project has been and is a very positive addition in many ways to Far Hills. The sky did not fall then and will not fall now with the Errico Acres plan. With that, I thank the Planning Board for their consideration of this very important matter.

PUBLIC HEARING – HOUSING PLAN ELEMENT AND FAIR SHARE PLAN (HPE/FSP)
– *carried from the May 5, 2019 and June 3, 2019 meetings*

Ms. Rubright advised that Mr. Stuart Lieberman, of Lieberman & Blecher, P.C. was in attendance and asked that he introduce himself to the Planning Board. Mr. Lieberman addressed the board and indicated that he represented Preserve Far Hills and would be calling two witnesses; a planner and an environmental consultant who would testify this evening.

Mr. Banisch provided an overview of the history of the Borough's Affordable Housing obligation through each round from the 1980's to present. He detailed the litigation encompassed through the Council on Affordable Housing (COAH) and as COAH had ceased to function as New Jersey's administrative agency, the NJ Supreme Court ruled in March 2015, that municipalities would have to demonstrate their constitutional compliance with affordable housing obligations in the Courts.

He continued by stating that in July 2015, the Borough of Far Hills entered the Court process by filing a declaratory judgment action with the NJ Superior Court in accordance with the procedures set forth by the Supreme Court in March 2015.

Mr. Banisch indicated that the mechanism in which the Borough satisfied its affordable housing obligation was through an agreement dated October 15, 2018 entitled "Agreement to Resolve Issues Between the Borough of Far Hills, Melillo Equities and Fair Share Housing Center Concerning the Borough's Mount Laurel Fair Share Obligations and the Means by Which the Borough will Satisfy Same." (The Settlement Agreement) The Settlement Agreement resolves the Borough's Court litigation by identifying the Borough's Third Round Mount Laurel obligations and the Borough's Fair Share Plan to address those obligations.

The Settlement Agreement identified three components of the Borough's Affordable Housing Third Round obligation as follows:

1. Rehabilitation Obligation – 4 units
2. Prior Round Obligation – 38 units
3. Round 3 Obligation – 75 units (Regional need which includes the gap period from 1999- 2015 and prospective need period for 2015-2025)

Mr. Banisch explained the 20% cap rule and the Borough's utilization of same to reduce the original obligation of 111 units to 75 units. He noted that that the FSHC fought against the Borough's utilization of the 20% cap. The Mayor and Borough Council asserted its right and through the Court process was able to utilize the cap rule thereby reducing the obligation from 111 to 75 units.

Mr. Banisch stated that the amended Housing Plan Element and Fair Share Plan (HPE/FSP) addresses the three components of need and are comprised of the following: Rehabilitation Obligation, the Prior Round Obligation, and the Third Round Obligation.

With regard to the Rehabilitation Obligation of four (4) units, Mr. Banisch indicated the Borough shall participate in the Somerset County Community Development Block Grant program as a source of funding or may self fund the projects with a minimum funding obligation of \$10,000.00 per unit. Simultaneously, the Borough will evaluate its housing stock to determine whether or not there are four rehabilitation housing units occupied by income eligible households and may seek an adjustment to reduce the rehabilitation obligation.

With regard to the Prior Round Obligation of thirty-eight (38) units and Third Round Obligation of seventy-five (75) units, Mr. Banisch stated these obligations would be addressed by several projects detailed in the HPE/FSP. He explained that the bonus credit was a one-for-one credit up to 25% of the affordable housing obligation. The five projects have been distributed between the Prior Round and the Third Round Obligations in order to maximize the bonus credit opportunity thereby reducing the actual number of units required to be constructed in the Borough. The projects consist of the following developments: The Polo Club, Dumont Road Apartments, Hotz Apartments located at 8 and 10 Peapack Road, Melillo (Errico Acres) located at 220 Route 202 and the Matheny Group Home located at 46 Peapack Road.

Mr. Banisch reviewed the HPE/FSP and detailed the allocation of the units amongst the five projects for each of the respective rounds. He noted that 10 of the 38 unit obligation for the Prior Round; and 19 of the 75 unit obligation for the Third Round were satisfied by the utilization of bonus credits. He added

that the Mayor and Council negotiated with FSHC for an Accessory Apartment program to be included in satisfying the Borough's Third Round obligation, yielding 10 unit credits.

The 38 unit Prior Round Obligation unit and bonus allocation is as follows:

Polo Club – 8 units (already existing)
Dumont Road – 6 units (already existing)
Hotz Apartments – 5 units plus 5 bonus credits
Errico Acres/Melillo Rentals – 5 units plus 5 bonus credits
Errico Acres/Melillo Age Restricted Rentals – 4 units

The 75 unit Third Round Obligation unit and bonus allocation is as follows:

Polo Club – 17 units (already existing)
Matheny Group Home – 8 units plus 8 bonus credits
Hotz Apartments – 2 units plus 2 bonus credits
Errico Acres/Melillo Rentals – 20 units plus 9 bonus credits
Accessory Apartments – 10 units

Mr. Banisch commented that the Amended Housing Plan Element and Fair Share Plan (HPE/FSP) exactly reflects the Settlement Agreement that the Mayor and Council have entered into through the Court process in order to address the Borough's Third Round Affordable Housing obligations.

Ms. Devine requested clarification as to the calculation of the rental bonuses.

Mr. Banisch responded that bonuses were capped at 25% of the 38 unit obligation and 25% of the 75 unit obligation.

Mr. Banisch explained pursuant to the Fair Housing Act, the Planning Board is required to adopt the HPE/FSP as an element of the Master Plan via a public hearing process in order to address the Borough's affordable housing obligations. He further indicated that the public hearing was duly noticed, by providing ten (10) day notice to Somerset County and to the newspaper of record, in order to provide an opportunity for the public to be heard. Mr. Banisch advised that as he has concluded the public presentation of the HPE/FSP and if the Board had no further questions, the hearing could now be opened for comments from the public.

Ms. Ross inquired as to the Court imposed timeframe for the adoption of the HPE/FSP and any ensuing result if the HPE/FSP was not adopted this evening.

Mr. Banisch responded that the Court schedule indicated that the hearing would take place at tonight's Planning Board meeting and anticipates an expeditious adoption of the HPE/FSP by the Planning Board. Mr. Banisch indicated that the possibility of not proceeding with the HPE/FSP was not explored with the Court as the Borough was expected to adhere to the Court imposed schedule.

He further detailed the following compliance requirements as dictated by the Court schedule with regard to the HPE/FSP which include this public hearing; adoption by the Planning Board and subsequent endorsement by the Borough Council. Additionally, the Borough Council is also required by the Fair Housing Act to introduce and adopt zoning ordinances which will enable zoning for the development of the following projects: Hotz Development Project, Matheny Group Home Project and the Errico Acres Project as outlined in the HPE/FSP. Mr. Banisch continued that the Borough Council will also be required to adopt a Spending Plan. He detailed that the Borough of Far Hills is one of many municipalities that

collects affordable housing development fees from new construction, which will set forth manner for the distribution of those funds for affordable housing projects from now through 2025.

Ms. Rubright inquired as to the anticipated timeframe imposed by the Court for the Borough to satisfy its compliance requirements.

Mr. Banisch responded that a deadline of November 2019 was requested by the Court to have all of the aforementioned documents completed.

Ms. Rubright inquired as to the next steps for the development of the projects detailed in the HPE/FSP.

Mr. Banisch clarified that the adoption of the HPE/FSP does not authorize an applicant to submit a site plan development application. He stated that no applications could be submitted to the Planning Board for site plan approval until the enabling zoning ordinances were adopted by the Borough Council which would be through a public hearing process with notifications to the public as required by statute.

Chairman Lewis inquired as to the specificity of the HPE/FSP pertaining to the developers detailed in the plan and the process should any changes be necessary.

Mr. Banisch responded that the HPE/FSP and the enabling zoning ordinances would permit affordable housing development only at the sites indicated in the plan; however, it was conceivable that the developers could change.

Ms. Rubright suggested that the Public Hearing portion of the meeting be opened initially for questions, followed by comments and then Mr. Lieberman would have an opportunity to present his case. Ms. Rubright also advised that due to the large number in attendance, that repetitive comments and questions should be avoided and each member of the public would be subject to a 3-4 minute time limit.

Ms. Ross inquired if a condition could be placed upon the for-sale units to prohibit the rental of those units, or alternatively, if they are permitted to be rented that they be limited to only tenants that qualify for the age restriction requirements.

Mr. Banisch responded that he was unaware of any enforceable restriction that would prohibit a homeowner from renting their property; however, any tenant would be required to satisfy the age restriction requirement.

Ms. Ross also inquired as to Planning Board's authority regarding the adoption of the amendment to the Master Plan and zoning ordinances.

Mr. Banisch responded that tonight, the Planning Board was considering the adoption of the HPE/FSP as a component of the Master Plan. He explained that zoning ordinances would be originated by the Borough Council and referred to the Planning Board in accordance with the standard procedures of the Municipal Land Use Law. The Planning Board, under its referral powers, can make comments regarding the zoning ordinances for consideration by the Borough Council.

Ms. Ross questioned the applicability of the current Borough's ordinances to the affordable housing developments detailed in the HPE/FSP.

Mr. Banisch indicated the Borough's ordinances, as well as state regulations, would still be applicable and would not be waived because it is an affordable housing project.

Chairman Lewis inquired if the situation would change as a result of a Builder's Remedy lawsuit.

Mr. Banisch responded that in a Builder's Remedy lawsuit scenario, the municipality loses control over how much development takes place and these lawsuits typically result in a number far exceeding the affordable housing obligation originally required of the municipality. He noted that by the Mayor and Council taking control of the situation and determining how it was going to address the affordable housing obligation, the Borough was able to do so in a manner that addressed only the affordable housing obligation.

Mr. Banisch referenced the Hills Development in Bedminster Township, as indicated by Mayor Vellone in his statement this evening, which resulted in a number far exceeding the affordable housing obligation that the municipality would have otherwise had to address. Mr. Banisch indicated that the affordable housing arena was in its infancy at the time that happened, however, Builder's Remedy lawsuits commonly result in much more development than is necessary to be addressed by the assigned affordable housing obligation for a municipality.

Vice-Chairman Rochat inquired as to any Borough subsidy being provided for the Hotz and Matheny developments.

Mr. Banisch responded that most likely a subsidy for the sewer connection fees would occur for the Hotz Development. With regard to the Matheny Group Home, the subsidy would be in the form of the donation of the Borough owned land at the site.

The meeting was now opened to the public for questions only at this time.

Sohail Khan, 3 Fox Hunt Court, Far Hills inquired as to the urgency in approving the HPE/FSP without the results of the traffic, parking and environmental studies.

Johanna McCarten, 38 Peapack Road, Far Hills inquired as to the total number of units required for the Borough to meet its affordable housing obligation and the number that would be included in the village area.

Mr. Banisch responded that there is a total of 113 units required for the Borough to satisfy the prior and current round obligations. Mr. Banisch responded that 46 units would be in the Village area, consisting of the Polo Club, Dumont Road Apartments, Hotz Development and the Matheny Group Home; and 29 units at the Errico Acres site.

Denise Duffy, 50 & 62 Pheasant Hill Drive, Far Hills inquired as to the viability of the Errico Acres site due to the potential environmental constraints and based on the probability that the property would not receive a satisfactory percolation test.

Mr. Banisch indicated there will be an additional presentation made by the developer of the site and encouraged her to attend to address her specific questions. Mr. Banisch noted that the site would most likely require a mechanism to support the development either through a sewer line connection or the construction of a waste water treatment facility and disposal beds on the property.

Janine Silberberg, 90 Hidden Valley Road, Far Hills questioned why the HPE/FSP did not address environmental constraints on the Errico Acres site whereas the other two sites were detailed in the HPE/FSP as being unencumbered by environmental constraints. She also inquired if the Errico Acres site could be excluded from the HPE/FSP but continue with the other sites detailed in the plan.

Mr. Banisch indicated that the Errico Acres site is deemed approvable, available, developable and suitable and the reference to the 20 upland acres depicts the unconstrained land. With regard to the exclusion of the Errico Acres site from the HPE/FSP, Mr. Banisch responded that he did not believe it was feasible to do so.

Ms. Rubright provided additional information regarding the scope of the Master Plan and the HPE/FSP, noting that it is a higher-level view of a property in order to make a basic determination that the site meets the four criteria for development those being: approvable, available, developable and suitable. Ms. Rubright, advised that in 1975, the NJ Supreme Court mandated that every municipality has an obligation to provide zoning that provides an opportunity for affordable housing. She continued stating that it is not the municipality's responsibility to develop the property but only to provide the opportunity and municipalities often partner with developers in order to satisfy their affordable housing obligations.

Mr. Banisch added that the developments detailed in the HPE/FSP were approved by the Borough Council, accepted by the Fair Share Housing Center and approved by the Court. The Errico Acres site and other the sites in the plan, are required to comply with ordinances and regulations during the site plan approval process.

Ms. Silberberg continued by referencing the HPE/FSP, which detailed the constraints for the properties not selected for affordable housing development and inquired if the Errico Acres site could also be excluded based upon those constraints.

Mr. Banisch responded that the Errico Acres site was considered and was determined as an affordable housing site.

Ms. Devine inquired as to the ramifications if environmental constraints were discovered on any the sites designated for affordable housing development.

Mr. Banisch responded that rather than a nullification of the site as a potential affordable housing development; a redesign would be expected to accommodate any environmental considerations that may exist. The developer would be investigating those environmental considerations as part of the development of the site plan prior to being submitted for consideration by the Planning Board.

Ed Coury, 100 Lake Road, Far Hills inquired as to the financial cost to the Borough to self-fund the project with the RPM Development Group and building only fifty (50) units.

Mayor Vallone responded that RPM estimated between \$250,000.00 and \$300,000.00 per unit for the construction cost alone. He indicated that the total cost to build the fifty (50) units would cost the Borough approximately \$20 million dollars in total.

Mr. Coury continued by referencing the Polo Club and inquired if the Borough had on occasion purchased units to avoid losing the affordable housing credits. He further inquired as to the projected affordable housing obligation for future rounds if based upon the number of units in the proposed developments.

He also commented upon the affect of current housing values in the Borough when the additional 105 properties are built at the Errico Acres site.

Mr. Banisch indicated that the affordable housing development going forward would be rental units in contrast to the Polo Club which were owner occupied for-sale units, so the Borough would not need to purchase any of the units in order to safeguard the affordable housing credit. Mr. Banisch responded that their was no way to predict the affordable housing obligation for future rounds, but commented upon the potential impact of a Builder's Remedy lawsuit should the Borough not satisfy its obligation as directed by the Settlement Agreement.

Ms. Rubright indicated that she received three names of the officers of the Preserve Far Hills organization and that none of them would be speaking this evening but Mr. Lieberman would be calling two witnesses to testify.

Mr. Lieberman responded that one of his witnesses was in a car accident this evening and would be unable to attend, therefore only one witness would be testifying on behalf of the Preserve Far Hills organization.

Mr. Lieberman inquired of Borough Planner, David Banisch if the Planning Board was under a Court Order to approve the HPE/FSP. He also inquired as to the feasibility of the development at the Errico Acres site and questioned the resources used to make the determination of the developability of the 20 upland acres, and if there were steep slopes on the site.

Mr. Banisch responded that the Planning Board was not under a Court Order to approve the HPE/FSP but that the Court had outlined a schedule and Judge Miller had been informed that the public hearing would be held this evening and formal action may be expected; however, the Board would make its own determination. Mr. Banisch corrected Mr. Lieberman that the four components include available, approvable, developable, and suitable, and noted that feasibility was not one of the required components. Mr. Banisch indicated that he assessed the 20 upland acres as developable by reviewing maps from the NJDEP but did not conduct an onsite inspection. Mr. Banisch indicated that there may be steep slopes on the property but confirmed that no detailed analysis was conducted.

Mr. Lieberman indicated that the Planning Board has an independent responsibility and asked Mr. Banisch if he would agree that actions taken by the Borough Council should not be binding upon the Planning Board.

Mr. Banisch responded affirmatively but indicated that it would be acceptable to amend the Master Plan to reflect the Settlement Agreement approved by the Borough Council through the Court process.

Mr. Lieberman then questioned what data was provided, that was deemed reliable, for the Planning Board to make a determination regarding the suitability of the development of the Errico Acres site.

Mr. Banisch indicated that he included a narrative of the general site characteristics in his report.

Mr. Lieberman inquired as to the guidance provided to the Planning Board regarding the evaluation of the site, which is completely automotive dependent, in order to meet the suitability requirements. Mr. Lieberman also inquired if there were any amenities for the age restricted development and sought confirmation that the development was located a distance of $\frac{3}{4}$ of a mile from the Borough Village.

Mr. Banisch responded that he had not provided guidance to the Planning Board with regard to automotive dependency. He also indicated that there were no amenities proposed for the Errico Acres development and confirmed that the location was approximately $\frac{3}{4}$ of a mile from the Borough Village.

Mr. Lieberman inquired if Mr. Banisch had reviewed the NJDEP Landscape Project as it relates to this site.

Mr. Banisch indicated he had not consulted the NJDEP Landscape Project for this site.

Far Hills Borough Attorney, Joseph Sordillo inquired of Mr. Banisch if he attended the case management conference with Judge Miller held approximately two weeks ago.

Mr. Banisch responded affirmatively.

Mr. Sordillo indicated that during the case management conference Judge Miller did not order the Planning Board to adopt the HPE/FSP and asked Mr. Banisch if that was correct.

Mr. Banisch confirmed that Judge Miller did not order the Planning Board to adopt the HPE/FSP.

Mr. Sordillo indicated that at that conference, Judge Miller did, however, indicate that if the Borough did not move forward and adopt a HPE/FSP that was consistent with the Settlement Agreement that the Borough's immunity against Builder's Remedy lawsuits could be at jeopardy.

Mr. Banisch confirmed that statement.

Mr. Sordillo continued, stating that should the HPE/FSP not be adopted, that the Borough would need to provide the reasons for not proceeding and would be required to substantiate same by way of Motion to the Court.

Mr. Banisch concurred and also stated that the FSHC would oppose any extension of immunity if the Borough did not fulfill its obligations by addressing the compliance requirements of the Settlement Agreement.

Mr. Sordillo inquired of Mr. Banisch if, on behalf of the Borough of Far Hills and the other municipalities he represented, he had previously handled Master Plan Amendments. Mr. Sordillo also inquired if Mr. Banisch had previously handled, in general the adoption of Master Plans; and in general, the Reexaminations of Master Plan Amendments.

Mr. Banisch responded affirmatively to each of the questions.

Mr. Sordillo, then asked Mr. Banisch if in his experience, were environmental analyses normally conducted for each individual site that is subject to the Master Plan.

Mr. Banisch responded no.

Mr. Sordillo inquired if when the Master Plan is presented for adoption by the Planning Board are there assurances at that time that each individual site covered by the Master Plan, which is essentially the entire municipality, can be developed as proposed in the Master Plan.

Mr. Banisch responded no, there are no assurances.

Mr. Sordillo then inquired of Mr. Banisch, that normally analyses are not done during the Master Plan Adoption, Master Plan Amendments or Reexamination of the Master Plan.

Mr. Banisch responded yes, however, but it can be.

Mr. Sordillo agreed that anything can be done, but in the normal course, in your experience it is not normally done.

Mr. Banisch responded affirmatively.

George Mellendick, 260 Lake Road, Far Hills inquired if Mr. Banisch agreed that the Errico Acres project, if approved by this Board, is a Borough altering step and process.

Mr. Banisch responded that there is no doubt that increasing the population of the Borough to the degree that it would be increased with this development would alter the Borough, just as the Polo Club had done.

Dr. Mellendick inquired if there would be 75 affordable units.

Mr. Banisch responded that there would be 57 units with 19 bonus credits, yielding 76 units and bonuses.

Dr. Mellendick inquired as to the number of units that would be added to the housing stock in the Borough and expressed concern regarding the percentage of the residential units that would be affordable housing.

Mr. Banisch responded that there would be approximately 65 affordable units in the Borough but could not calculate the percentage of affordable units in the Borough at this time.

Dr. Mellendick estimated that there would be an increase of about 30% in the housing stock, and approximately 25% of the housing units would be affordable. He then inquired if the Errico Acres site was being reduced from ten (10) acre zoning to perhaps one-quarter ($\frac{1}{4}$) acre zoning.

Mr. Banisch responded that the Errico Acres site was located in a six (6) acre zone not a ten (10) acre zone. He further stated, that by addressing the affordable housing obligation in an affirmative manner, the Mayor and Council are essentially ensuring that the remaining countryside portions of the municipality can continue to enjoy the zoning controls that they have without having to worry about them being challenged. Mr. Banisch emphasized that that was an important part of maintaining the community character in this municipality. If the Borough does not address its affordable housing obligation effectively it could then be subject to a Builder's Remedy lawsuit. Mr. Banisch continued by stating that this is an affirmative action to actually protect the quality of life for all the residents in the Borough including the people in the countryside and in the village.

Dr. Mellendick asked if he agreed that that statement was absurd based upon the increase in population and number of affordable and market rate houses that would be added to the Borough.

Mr. Banisch disagreed as to the absurdity of the statement and based it upon having seen affordable housing developments and inclusionary developments on very large scales that have had dramatically altering impact on a community.

Dr. Mellendick asked if Pulte Homes should have presented a more detailed proposal than was presented at the October 6, 2018 Borough Council meeting (*actual meeting date was October 9, 2018*), prior to the Council authorizing the agreement. He further commented that he felt the minutes of that meeting did not provide enough detail.

Mr. Banisch responded that each of the presentations by the developers contained a similar amount of detail but would not comment upon the minutes. He suggested that a recording of the meeting may better provide the details he was seeking.

Dr. Mellendick asked the Planning Board if they would agree with him that Haste Makes Waste, or rather Act in Haste and Repent at Leisure.

There were no further questions from the public, the meeting was now opened for public comment only.

PUBLIC COMMENT

Cindy DeCorges, 23 Railroad Avenue, Far Hills commented that Preserve Far Hills has been determined to move the development to the Village area and expressed that affordable housing be spread evenly throughout the Borough. She expressed that residents should contact their legislators to bring about a change in affordable housing obligations required of municipalities. She also commented that the Borough should take all actions necessary to avoid a Builder's Remedy lawsuit.

Ed Coury, 100 Lake Road, Far Hills commented he and the members of Preserve Far Hills did not oppose the 29 affordable units to be built on Errico Acres, but did oppose the 105 market rate units required to finance the affordable units. He also commented that Preserve Far Hills did not oppose the development location but only the number of units that were to be built. He lastly stated that had it not been for the efforts of Preserve Far Hills, that the imposed age restriction on the project might not have been effectuated.

Ms. DeCorges commented that the only way for a developer to build the affordable units required to meet a municipality's obligation is to also build market rate units which serve to finance the project.

Mr. Banisch commented that the Mount Laurel regulations identify the acceptable set aside percentage of affordable units to market rate units. He noted that the Errico Acres site provides a 20% set aside for affordable units wherein the regulations only require a 15% set aside. The negotiations between the Borough and the developer achieved a higher set aside percentage thereby reducing the number of overall market rate units. The project provides more affordable units than what would normally be required under the regulations and is an attractive agreement for that reason.

George Mellendick, 260 Lake Road, Far Hills commented upon the speed by which the Borough Council approved the Errico Acres project after the presentation held at the October 9, 2018 Council meeting. He further commented upon the ability to require the Errico Acres development to be built in phases.

Mr. Banisch responded that the phasing of the development does not pertain to the HPE/FSP being reviewed this evening.

Ms. Rubright responded that any concerns with regard to the phasing of the project would be more appropriately addressed during the Planning Board's review of the site plan.

Jack Koury, 11 Far Hills Avenue, Far Hills commented that the affordable housing issue was tearing apart our town and blamed the system not the Borough Council.

Michael Joyce, 57 Liberty Corner Road, Far Hills suggested that it would be helpful if a brief description of the process for the development of the affordable housing was provided to the public.

There being no further comments from the public, Chairman Lewis closed the public hearing, the public question and public comment portions of the meeting.

PUBLIC PRESENTATION

Ms. Rubright swore in Mr. Carlos Rodrigues, FAICP, PP, Design Solutions, LLC, Princeton, NJ. Mr. Lieberman inquired as to Mr. Rodrigues' professional qualifications to which Mr. Rodrigues responded that he has been a professional planner in NJ for over forty (40) years and has experience testifying as an expert witness before Planning Boards, although had not previously testified before the Far Hills Planning Board. Mr. Lieberman requested that Mr. Rodrigues be offered as an expert in professional planning.

Ms. Rubright advised Chairman Lewis and the Board that Mr. Rodrigues could be accepted as an expert in professional planning.

Mr. Lieberman inquired if Mr. Rodrigues had reviewed the proposed amendment to the Master Plan.

Mr. Rodrigues answered affirmatively.

Mr. Rodrigues stated that the selection of the Errico Acres site to satisfy the bulk of the Borough's affordable housing obligation, and its inclusion in the HPE/FSP would constitute a serious mistake in terms of planning. He continued that the site was $\frac{3}{4}$ of a mile from the Village center and located between the railroad right-of-way and US Route 202. He indicated that the site could only be accessed from the highway, and no sidewalks or bike paths exist or will ever exist. The site is not served by public transit nor would it ever be served by public transit, thus making the site 100% auto-dependent, which he commented is the worse thing that can be said about any affordable housing site in the 21st century.

Mr. Rodrigues provided the members of the Planning Board a document consisting of five pages, which he assembled himself. Ms. Rubright indicated the document would be labeled, Exhibit O-1.

He indicated page one detailed a WalkScore report which is an algorithm program used by realtors to calculate the walkability of a location and indicated that the higher the score, the more people that would like the location. He stated that the Errico Acres site received a WalkScore of 4 (out of 100) and a BikeScore of 11. He contrasted this with the WalkScore of 39 and BikeScore of 44 for the Borough municipal building located at 6 Prospect Street.

He further stated that if the Errico Acres site is developed as detailed, it will be the very definition of high-density sprawl which runs contrary to the Municipal Land Use Law, New Jersey State Development and Redevelopment Plan, the Somerset County Growth Management Plan and the Borough's own Master Plan.

He indicated that the location of the Errico Acres site would require residents to own a vehicle in order to function and referenced the Center for Neighborhood Technology's Housing and Transportation Affordability Index which is used by the USDOT, HUD and other federal agencies, and bundles housing and transportation costs into a single index. He indicated that the combined cost of housing (56%) and

transportation (22%) equals 78% of household income in the Census Block Group where the site is located. He indicated that the same sources calculates the average annual cost of owning a vehicle at that location is \$11,358 and the average annual vehicle miles traveled cost is \$3,488. Mr. Rodrigues stated that it appeared callous that the Errico Acres location for the affordable housing construction is an auto-dependent location that would require low and moderate income households to be saddled with the additional costs of owning and maintaining motor vehicles.

Mr. Rodrigues further stated that it was poor planning to place age-restricted housing at the same location, as most seniors do not want to be stranded in an auto-dependent location. He referenced the American Association of Retired Persons (AARP) report in the handout, which detailed the amenities that seniors are looking for in a livable community.

With respect to environmental constraints, Mr. Rodrigues stated that the HPE/FSP lacks any evidence of proper due diligence with regard to the environmental conditions for the Errico Acres site. He stated that reviewing the NJDEP Landscape Project indicates a possible habitat for two Rank 5 Federally listed species: the Northern Myotis and the Indiana Bat. He explained that a Rank 5 status is assigned to species-specific habitat patches containing one or more occurrences of wildlife listed as threatened and endangered pursuant to the Federal Endangered Species Act of 1973. A documented presence of those species, or of any other species on the State and Federal list of threatened and endangered species is sufficient to automatically disqualify it from development and referenced the map in the handout. He continued to state that the NJ Highlands Council map, also in the handout, shows an area on the site to be compromised by habitat for Federally protected species.

He stated that the HPE/FSP provides no discussion of environmental features or any effort to show that the site is not encumbered by regulated environmental features that can seriously constrain, or even prevent, land development. He questioned how the Planning Board, in good conscience, could endorse a site plan about which nothing is known in terms of the environmental suitability for inclusion in the Borough's HPE/FSP.

Mr. Rodrigues continued to describe the site's location as the R-6 district, which permits single family homes at a density of one unit per six acres. At a density of 3.2 units per acre, the proposed townhouse/apartment development is completely inconsistent with both the current master plan as well as the current zoning code. He indicated that the density of the proposed project is grossly out of character with the master plan's standards for this low-density, rural and agricultural zoning district, and therefore, inconsistent with the first goal of the Far Hills Borough Master Plan which is to "Preserve, protect and enhance the community's existing character".

Mr. Rodrigues continued by indicating the draft HPE/FSP acknowledges this inconsistency, stating that "the objective of maintaining community character and the fundamental principles in the Land Use Plan was achieved in all of the development proposals with the exception of only the inclusionary development proposed for Block 5, Lot 4, which is needed to meet Mount Laurel obligations." He continued, saying that this statement is disingenuous as it suggests that this specific site, Block 5 Lot 4 is the only site in the entire Borough capable of meeting the Borough's affordable housing obligation. He stated that this was patently absurd and that there were hundreds of other sites that are comparable, in the sense that they lack public water and public sewer and are entirely auto-dependent. The HPE/FSP offers no planning justifications for selecting this particular site. He opined that the only reason for selecting the site appears to be that the owner is eager to do deal with a national developer and thus circumvent the long-standing, low-density zoning. The landowner will undoubtedly make a windfall, while the Borough will be saddled with auto-dependent sprawl development.

He continued indicating that the draft HPE/FSP mentions other possible sites for inclusionary housing, including Borough-owned site in the Village, but dismisses them without proper justification. There is no serious analysis of potential flaws such sites may have, if indeed they are flawed, they are simply dismissed as not appropriate.

With regard to public infrastructure, Mr. Rodrigues indicated that the Borough's Master Plan is also clear in condemning the extension of public services to this site: "The Borough seeks to focus a limited amount of future growth into areas where infrastructure exists to support it, and where it can be guided away from undeveloped lands, known as 'environs'."

Mr. Rodrigues continued by noting the Master Plan specifically states that on-site septic systems are the "accepted means of wastewater disposal" within the R-6 district, whereas this development proposes public sewer and water. The site is not within an approved sewer service area. The extension of public infrastructure to the site will be expensive, particularly because no other lots are currently planned to benefit from these public services, and therefore, no other sites can help pay for the extension. Extending these public services will create considerable pressure for new strip development along the undeveloped portions of Route 202 between the Village Center and the site. If built, these water and sewer trunk line extensions will create a powerful incentive for developing those frontages with various strip commercial ventures, again contrary to the Borough's Master Plan. Far Hills will look like Bridgewater or any other nameless sprawl NJ town. If a packaged treatment plant is built on this site instead of extending the sewer line, then the residents will be living next to a sewer treatment plant.

He stated that the proposed project would also have a deleterious impact on the character of Route 202, which is a designated scenic corridor in the Far Hills Master Plan. The Master Plan states, "Because of the visual openness of the area, extensive buffers to Route 202 should be provided to maintain the scenic character of the transportation corridor through this portion of Far Hills. As continued development in the region impacts the Route 202 corridor, the visual relief offered along the Far Hills segment of the regional artery becomes increasingly valuable." Currently, the frontage of the site is heavily vegetated, which helps minimize views of the site from the highway, however, many of these trees and vegetation will need to be removed to accommodate the planned boulevard to access the site, and for the necessary sight lines. Therefore, the scenic character will also disappear.

He reiterated that the site is located $\frac{3}{4}$ of a mile from the Village center, with no sidewalks or dedicated bicycle facilities. It is virtually guaranteed that future residents of the affordable housing will be tempted to walk or bike to the village and to the train station, thus posing a critical public safety concern for both the residents and the traveling public on the highway. Walking and bicycling are important for recreation and mobility, and promote good social and physical health. This is particularly critical for older residents. The lack of basic opportunities for walking and bicycling make this site completely unsuitable for the proposed high-density development.

Mr. Rodrigues expressed that the location of the proposed affordable housing next to an active rail line is another slap in the face of the future occupants. In addition to being extremely disrespectful to the future low and moderate-income occupants, it poses both public safety and noise issues. While a fence can prevent children from accidentally running into the rail corridor, the indoor/outdoor noise of 40+ trains running from 4:30 am to midnight requires a more suitable buffer. He continued noting that the Affordable Housing Proposal, indicates a significant amount of trees would be removed in the rear of the property to accommodate the housing. This is also inconsistent with the Master Plan policy that states

“forested areas of the Borough are an essential part of the character of Far Hills and should therefore be maintained.”

The affordable housing in this development would be segregated from the market rate units in two multi-family buildings next to the active rail line. Segregating affordable housing and placing it in inferior locations perpetuates racial and social injustices.

With respect to State and Regional planning policies, Far Hills is located in the Planning Area of the New Jersey Highlands Region. Of relevance to the proposed development is a planning area goal from the 2008 Highlands Master Plan that encourages appropriate patterns of growth that are consistent with the NJ State Development and Redevelopment Plan and smart growth strategies and are “in or adjacent to areas already utilized for such purposes; the Plan also discourages piecemeal, scattered and inappropriate development.” The Borough’s existing Master Plan policies are, in fact, aligned with these goals, but the current proposal is in direct conflict with them.

With respect to the NJ State Development Plan, the 2001 State Plan continues to provide a vision for the future of all of New Jersey that will preserve and enhance the quality of life for its residents. The Planning Area Policy Map provides land use strategies suitable for each of the state’s unique geographies. According to the NJ State Planning Commission’s latest mapping (7/1/16) all of Far Hills Borough is situated within Planning Area 5, the environmentally sensitive planning area, the objective of which is to “Protect environmental resources through the protection of large contiguous areas of land; accommodate growth in centers; protect the character of existing stable communities; confine programmed sewers and public water services to centers; and revitalize cities and towns.” Development of the site as proposed in the HPE/FSP will run contrary to the policies of the State Plan for Planning Area 5. The appropriate location would be to select a site, either in or directly adjacent to an existing designated center, in this case the Village, which has access to public water, public sewer, a train station on NJ Transit’s Gladstone branch, and access to a variety of goods and services. He indicated that an alternative would be to designate a new center and acknowledged would be a heavy lift for the Borough.

With respect to the Council on Affordable Housing, the substantive rules of the former COAH, which the courts have largely adopted as a guide in current settlement proceedings, require that sites be “available, suitable, developable and approvable.” He opined that the site in question is not “suitable”, for reasons previously discussed. The same administrative rules also provide that “in planning areas 4 or 5, as designated in the State Plan, COAH shall require inclusionary development to be located in centers. Where COAH determines that a municipality has not created a realistic opportunity within the development boundaries of a center to accommodate that portion of the municipal inclusionary component that the municipality proposes to address within the municipality, COAH shall require the municipality to identify and expanded center(s) or a new center(s) and submit the expanded or new center(s) to the State Planning Commission for designation.” He indicated that these provisions seem to be ignored by Judge Miller and the Court appointed Special Master.

In conclusion, he explained that the inclusion of the subject site in the Borough’s HPE/FSP is not consistent with either the local planning framework, the Somerset County planning framework, the NJ Highlands Plan or the State Development and Redevelopment Plan. Including Block 5, Lot 4 in the Borough’s HPE/FSP directly contradicts the stated objectives and policies of the Borough’s planning framework, and patently ignores long held local and state planning practices, policies and regulations which are grounded in science, professional expertise and extensive public input for the benefit of affordable housing residents, communities and the State of NJ. Including the site in the HPE/FSP is tantamount to spot zoning for the benefit of one land owner and to the detriment of the entire town.

Mr. Rodrigues also informed the Planning Board that they were not a signatory to the Settlement Agreement and can not be compelled by anyone to adopt a HPE/FSP that they do not believe is true to the Borough's planning values. He added that Judge Miller has the authority to rezone the site without the HPE/FSH, but is highly unlikely he would do so. If the Errico Acres site is not part of the HPE/FSP, Judge Miller will direct the Borough to find an alternative site.

Mr. Lieberman thanked Mr. Rodrigues for the presentation and inquired if all the opinions he represented were within a reasonable degree of planning certainty.

Mr. Rodrigues responded affirmatively.

Mr. Lieberman thanked the Planning Board for the courtesy of this presentation and asked if the Board had any questions of Mr. Rodrigues.

Vice Chairman Rochat sought clarification as Mr. Rodrigues indicated that there were hundreds of sites available for a project with sewer and water. Mr. Rodrigues responded saying that the sites would not have water and sewer available but that there were hundreds of comparable sites potentially available that are equally inappropriate and similarly unsuitable as the Errico Acres site. He added that he would not recommend any of them; however, indicated that by the Borough stating that this is only site that is available was disingenuous. He opined, there is nothing notable about this site other than that the owner was making the property available to the Borough and wanted to make a deal.

Ms. Rubright commented that one of the factors is availability, and the Errico Acres site is available.

Mr. Banisch concurred that the Errico Acres site is available and is also within Planning Area 5 and would require an extension of utilities to support the proposed development. He opined that he believed that there may be numerous, not hundreds as previously indicated, of similarly situated sites in the Borough and commented that they would each present similar issues. He specifically noted, the Borough Council made the choice for the Errico Acres site, from a series of other choices that came forward, mindful of the fact that one of its overarching priorities is to protect the community character throughout Planning Area 5 in an effective way so as to prevent the possibility of a Builder's Remedy lawsuit from perhaps drastically altering the country side character more in a different location that is more inappropriate than the Route 202 site.

Ms. Rubright indicated that at this time members of the Planning Board and the Borough's professionals would ask questions of Mr. Rodrigues and then the meeting would be opened to questions from the public.

Ms. Rubright inquired of Mr. Rodrigues, before tonight, when was the last time he was in the Borough of Far Hills.

Mr. Rodrigues responded approximately a few months ago at a Borough Council meeting.

Ms. Rubright inquired, prior to that, when was the last time he was in the Borough of Far Hills and asked if he had witnessed the extreme bikeability as evidenced by the number of cyclists that frequent the roadways in the Borough.

Mr. Rodrigues responded that there is no extreme bikeability in the United States and stated that extreme bikeability is only found in Amsterdam or Copenhagen. He commented that there is a difference between a professional cyclist and a child on their bike when determining bikeability.

Ms. Rubright asked Mr. Rodrigues to explain the basis for the scoring method utilized to determine the WalkScore and BikeScore, as was presented in his report this evening, with the resulting indication that the Errico Acres site was a poor site based upon these analyses.

Mr. Rodrigues responded that the scores were based on an algorithm but could not provide any additional information.

Ms. Rubright asked Mr. Rodrigues if he would agree that people that live in affordable housing are not a homogeneous group; and that not all people of a certain age group, i.e. in 55+ communities are a homogenous group; and that not all people who live in affordable housing are homogenous with regard to race or ethnicity.

Mr. Rodrigues responded affirmatively to each of these questions.

Ms. Rubright continued by asking Mr. Rodrigues if he would agree that people who live in affordable housing can own and drive cars; and if people aged 55+ could own and drive a car; and if people aged 55+ could ride a bicycle.

Mr. Rodrigues responded affirmatively to each of these questions. He commented that auto dependency is depicted in the sense that each and every task would require a car.

Ms. Rubright inquired if people who live in affordable housing could have cars.

Mr. Rodrigues responded affirmatively.

Ms. Rubright asked Mr. Rodrigues if he had ever previously testified in support of site plan applications before a Planning or Zoning Board.

Mr. Rodrigues responded affirmatively.

Ms. Rubright inquired of Mr. Rodrigues, if in his experience, it is at the time of site plan application that an applicant would provide detailed testimony for example, regarding stormwater and drainage, and steep slopes.

Mr. Rodrigues responded affirmatively.

Mr. Lieberman interjected and objected to the line of questioning as not being germane to the review of the amendment to the Master Plan.

Ms. Rubright responded to Mr. Lieberman, by indicating that Mr. Rodrigues testified that there was no detailed testimony on those aspects in the HPE/FSP and she now sought clarification from him that, in his experience as a professional planner and having testified in support of site plan applications, if testimony is provided with regard to these issues at the time of site plan application before the Planning Board.

Mr. Rodrigues responded yes, of course.

Ms. Rubright inquired of Mr. Rodrigues if, in his experience and understanding, it is at the time of site plan application when the details regarding layout, roadways, buffers and landscaping and lighting are reviewed.

Mr. Rodrigues responded yes, those items are handled in excruciating detail at the time of the site plan application.

Ms. Rubright inquired if Mr. Rodrigues knew the existing zoning of the area on both sides of Route 202 from Errico Acres to the Borough Center, a distance of approximately $\frac{3}{4}$ of a mile.

Mr. Rodrigues responded the zoning was R-6, the same zoning as the Errico Acres site.

Ms. Rubright, inquired if it was his understanding or expectation that if there was increased pressure to develop any of those properties along Route 202, between Errico Acres and the Borough Center, that the requirements for rezoning and public hearings and changes in the Master Plan would have to be met in order to effectuate that.

Mr. Rodrigues responded yes.

Ms. Rubright asked Mr. Rodrigues if it would be his expectation, given the level of the scenic corridor that that would provide obstacles for such rezoning.

Mr. Rodrigues responded no, that once the water and sewer connections were installed that would become the perfect can opener.

Ms. Rubright, inquired if that that would become the determining factor for rezoning the entirety of the existing areas between the Borough Village area and the Errico Acres site.

Mr. Rodrigues responded that that was the logical sequence, that people would want to access the water and sewer connections with the types of uses that are commonly seen on highway frontage.

Ms. Rubright, inquired of Mr. Rodrigues if, in his opinion, the existing zoning, and existing Master Plan and existing scenic corridor would be completely obliterated just because there might be water and sewer available to the Errico Acres site.

Mr. Rodrigues responded that he did not use the term 'completely obliterated', but believed that there would be intense pressure to allow for other uses on that frontage.

Ms. Rubright inquired if Mr. Rodrigues was aware that a portion of the affordable housing obligation is proposed to be satisfied in the Borough Village area.

Mr. Rodrigues responded yes.

Ms. Rubright inquired if Mr. Rodrigues was aware that the Borough held hearings on several different properties for potential development to satisfy the housing obligations, and if he attended any of those hearings.

Mr. Rodrigues responded that he was only aware of the developments detailed in the HPE/FSP and that he had not attended any of the hearings.

Mr. Banisch requested clarification of Mr. Rodrigues as to his indication of the R-6 zone in the area on both sides of Route 202. Mr. Banisch indicated that the R-6 zone is an isolation from the R-10 zone that prevails throughout the municipality.

Mr. Rodrigues reviewed the Borough zoning map and indicated that 90% of the municipality is zoned R-10. He corrected his prior comment, indicating that one side of Route 202 is zoned R-10.

Mr. Banisch inquired of Mr. Rodrigues, if there are households in suburban Somerset County that need affordable housing, and do some of those households have cars, and if they utilize their cars for errands.

Mr. Rodrigues responded yes, there is need for affordable housing and that they probably own cars. He further clarified that by proposing an auto dependent development would require a household to have to utilize a vehicle for every single errand.

Mr. Banisch inquired of Mr. Rodrigues, if he was aware of the type of services available in the Borough Village area.

Mr. Rodrigues responded he could not identify the services available but stated that the services would exceed those at the Errico Acres site.

Chairman Lewis opened the meeting for public questions.

Borough Attorney, Joseph Sordillo asked Mr. Rodrigues if in his opinion, the lack of public transportation was one of the flaws with the Errico Acres site.

Mr. Rodrigues responded yes.

Mr. Sordillo asked if Mr. Rodrigues' testimony that this site would never be served by public transportation was correct, and if, so did he have any evidence to support that statement.

Mr. Rodrigues responded yes, and it was a wild guess.

Mr. Sordillo asked Mr. Rodrigues, if in his experience, do all municipalities have public transportation available.

Mr. Rodrigues responded no.

Mr. Sordillo asked Mr. Rodrigues, if in his experience, do all municipalities in the State of NJ have an affordable obligation.

Mr. Rodrigues responded no, as some municipalities are not in the process.

Mr. Sordillo asked Mr. Rodrigues if he was aware of any municipalities that are building affordable housing or have affordable housing that do not have public transportation available in the municipality.

Mr. Rodrigues responded probably yes, and commented that other municipalities may be making a similar mistake.

Mr. Sordillo asked Mr. Rodrigues, if in his opinion that all affordable housing should be developed near public transportation.

Mr. Rodrigues responded yes, but it wasn't just his opinion but the opinion of the affordable housing community throughout the United States.

Mr. Sordillo referenced the documents that Mr. Rodrigues presented, and the report which assessed the walkability and auto dependency for the properties at 220 US 202 (Errico Acres) and 6 Prospect Street (the Borough Municipal building). Mr. Sordillo indicated that for the 6 Prospect Street property, the report indicated that the closest park was the Leonard J. Buck Gardens and asked Mr. Rodrigues if he know where that park was located.

Mr. Rodrigues responded that he had no idea as to the location of the Leonard J. Buck Gardens.

Mr. Sordillo indicated that the Leonard J. Buck Gardens were located at 11 Layton Road and asked Mr. Rodrigues if he know where that was located.

Mr. Rodrigues responded that he did not.

Mr. Sordillo personally estimated that 11 Layton Road was approximately one mile from 6 Prospect Street and explained that the J. Malcolm Belcher Fairgrounds, a public park was located directly across the street from 6 Prospect Street, yet was not indicated on the WalkScore & BikeScore report. He then inquired of Mr. Rodrigues if he would still deem this information reliable.

Mr. Rodrigues indicated that the information was deemed reliable as it was used by 250,000 realtors across the country and was a free tool currently available; and it will continue to be used until something better comes along.

Mr. Sordillo inquired if Mr. Rodrigues' testimony regarding the environmental concerns that there are possible habitats for endangered species was correct.

Mr. Rodrigues responded yes, that was correct.

Mr. Sordillo inquired if Mr. Rodrigues had any evidence or knowledge to show that there are any endangered species at the site.

Mr. Rodrigues responded no.

Mr. Sordillo inquired if it was correct, if one of the endangered species that Mr. Rodrigues identified was the Indiana Bat.

Mr. Rodrigues responded yes, that was correct.

Mr. Sordillo then asked if he was aware of the impacts to the development if there is, in fact, an Indiana Bat at this location.

Mr. Rodrigues responded that if the area is determined to be a Rank 5 Federally protected habitat, the project is dead in the water.

Mr. Sordillo inquired of Mr. Rodrigues, if the project was dead in the water or is it that only the construction timing is limited to only certain months.

Mr. Rodrigues responded that he still felt the project would be dead in the water.

Mr. Sordillo, asked if it was correct that Mr. Rodrigues testified that the proposed development could be detrimental to the scenic corridor along Route 202.

Mr. Rodrigues responded yes, that was correct.

Mr. Sordillo inquired if Mr. Rodrigues had any information, testimony or evidence to support that statement.

Mr. Rodrigues responded that access would be opened to the property which doesn't currently exist, and the access road would be an interruption. He opined that extending public sewer and water could be a can opener that could create tremendous pressure for additional sites along the scenic corridor, and then the scenic corridor could disappear.

Mr. Sordillo indicated that Mr. Rodrigues stated that there was no access to the site from the roadway, and asked if Mr. Rodrigues was aware that there was already a driveway accessing the property from Route 202.

Mr. Rodrigues responded no, he was not aware as he did not go on the property.

Mr. Sordillo asked if Mr. Rodrigues would change his testimony if he was made aware that there was actually a driveway to the site from Route 202.

Mr. Rodrigues responded no, as he would not imagine that the existing driveway would meet the specifications that would be required for a driveway servicing 134 units.

Mr. Sordillo asked if the driveway was widened even slightly, would it still be an issue.

Mr. Rodrigues responded that traffic engineers have regulations for site distance and site triangles.

Mr. Sordillo asked if Mr. Rodrigues heard the testimony by the Borough Planner this evening, wherein he indicated that the Borough's Scenic Corridor Ordinance would have to be abided by in connection with this development.

Mr. Rodrigues responded yes.

Mr. Sordillo then inquired of Mr. Rodrigues, if the Scenic Corridor Ordinance is being abided by, then wouldn't that protect the scenic corridor on Route 202.

Mr. Rodrigues indicated that he was unfamiliar with the Borough's Scenic Corridor Ordinance but responded that he was unaware if the driveway would remain in the same location, however, indicated it

would need to be expanded considerably in order to gain access to the site. He stated that he was uncertain how this could be accomplished and still abide by the ordinance.

Mr. Sordillo inquired as to Mr. Rodrigues' testimony regarding that the sites' proximity to the railroad line was a negative for the site due to the removal of some trees and a potential safety issue.

Mr. Rodrigues responded that per the site plan, the affordable housing units were jammed up against the railroad tracks.

Mr. Sordillo responded that Mr. Rodrigues had previously testified that affordable housing should be located near public transportation.

Mr. Sordillo asked Mr. Rodrigues, that based upon his testimony, is it his opinion that all affordable housing in the Borough of Far Hills should be located within the Village area.

Mr. Rodrigues indicated yes, that it should be within a designated center and referenced the NJ Highlands Plan, and the State Plan, the COAH rules in support of that statement.

A comment from the public indicated a car was necessary, even if you live in the Borough Village area.

Dave Karner, 4 Ludlow Avenue, Far Hills commented if Mr. Rodrigues was aware of the walking path proposed for the Errico Acres site as he had previously indicated that the site was not conducive for senior citizens as it did not provide an opportunity for exercise.

Mr. Rodrigues responded that it was a very interesting walking path.

Ms. Ross inquired if there was a possibility in the next month, to conduct a phase one analysis of the environmental constraints of the site.

Mr. Banisch responded that the Borough Council would need to authorize the analysis and suggested that the Planning Board would need to make the request if that is to be undertaken. Mr. Banisch opined that a month was a tight timeframe, depending upon the degree of analysis. He indicated that as Mr. Lieberman indicated earlier in his questioning, that mapping was not entirely accurate. Mr. Banisch indicated that some fieldwork would be necessary to ascertain the wetlands and buffers in addition to having an environmentalist walk the site in order to conduct a habitat analysis. Mr. Banisch added that this type of investigation and analysis will be conducted by the developer via the site plan application process.

Ms. Ross inquired as to the timeline/deadline before the Borough is at risk of a Builder's Remedy lawsuit.

Mr. Banisch responded that a conference call was scheduled with Judge Miller for next Monday morning to provide a status update.

Ms. Devine commented that the amendment to the Master Plan was a major event and suggested that a request to the Court be made for additional time.

Mr. Banisch responded that Judge Miller is aware of the significance of a Master Plan amendment and noted that he was well versed in the site plan approval process. Mr. Banisch informed the Board that a concern was expressed by FSHC that there would be continual delays which prompted the limit on the Borough's grant of immunity.

Councilwoman Tweedie commented that she has received enough information from the presentation tonight and prior meetings to proceed.

There were no further comments.

Motion by Councilwoman Tweedie, seconded by Mayor Vallone that the Amended Housing Plan Element and Fair Share Plan be adopted.

Roll Call:

Aye: Ms. Layton, Mr. Rochat, Councilwoman Tweedie, Mayor Vallone, Mr. Welsh, Chairman Lewis

Nay: Ms. Devine, Ms. Ross

Abstain:

Recused:

Motion Carried.

ZONING UPDATE

Chairman Lewis reviewed the July 1, 2019 report.

ADJOURNMENT

Motion by Ms. Ross, seconded by Vice Chair Rochat and unanimously carried to adjourn the meeting at 10:15 p.m.

Respectfully submitted,



Dorothy S. Hicks

Acting Planning Board Secretary/Borough Clerk

APPROVED – 10/7/19