

TOWNSHIP OF LOPATCONG
PLANNING BOARD MEETING

June 26, 2013

The meeting of the Planning Board of the Township of Lopatcong was called to order by Chairman VanVliet at 7:00 pm. A silent prayer was offered followed by the Oath of Allegiance.

Chairman VanVliet stated “adequate notice of this meeting has been provided indicating the time and place of the meeting in accordance with Chapter 231 of the Public Laws of 1975 by advertising a Notice in The Star Gazette and The Express Times and by posting a copy on the bulletin board in the Municipal Building.”

Present: Members Belcaro, Coyle, Hall, Lance, McCabe, Nash, and Chairman VanVliet.

Old Business:

Minutes of April 24 and May 22, 2013 – Chairman VanVliet approved the minutes as there were no corrections.

New Business:

Master Plan Public Hearing – The Reexamination of the Township Master Plan, Township Master Plan Highlands Element, Highlands Land Use Ordinance and Highlands Checklist Ordinance.

Planner Ritter: This evening we are here to consider the 2013 Master Plan Reexamination Report. The materials that have been put together for your review have actually been broken into four different elements. There's the 2013 Master Plan Reexamination Report for your consideration. There's the Highlands Area Master Plan Element which is for inclusion, adoption and inclusion into the Township Master Plan as a formal amendment and then there is also included in you packet a draft Checklist Ordinance that would amend the Township Land Development procedures to incorporate a consistency determination with the Highlands Master Plan for any new development applications that would come before the Board that are not exempt from the Highlands regulations and the final part of your package is the Highlands Area Land Use Ordinance which you are not going to be taking any action on tonight. I was included in your package because I thought it was valuable to start the process of looking at that ordinance and beginning to read it as part of getting ready for the discussions that we are going to be having at the next several Planning Board meetings to discuss that ordinance. It is the actual section that will produce regulatory teeth in the bill. In other words, it is actually the proposed zoning regulations that would apply to developments that are found to come under the Highlands. So tonight three of the four elements that we are going to discuss; Reexamination Report, the Highlands Area Master Plan Element and also the proposed Checklist Ordinance which really is not a function of the Planning Board but I felt it was something we should discuss and then decide if you want to recommend it to Council for their consideration and then that

would go through the normal process of a Council ordinance in terms of hearings and that type of thing.

Now the Reexamination Report itself was brought about really by the adoption of the Highlands Act and this is all the way back to 2008 is when this process started. The Reexamination Report itself identifies those areas of the Township Master Plan that are in need of amendment to bring it into conformance with the Highlands Regional Master Plan and it is a relatively short report that is part of the package and what it goes into is looking at essentially the differences between the Highlands Master Plan goals and objectives and suggests areas of action that are needed to bring it into conformance and essentially that Reexamination Report identified or made four recommendations that would be considered.

One was to amend the Township Master Plan to incorporate the underlining objectives and policies of the Highlands Master Plan. It also recommends that the Township Zoning regulations be amended, be considered for amendment to adopt the Highlands Regional Land Use Regulations. It recommends that the Planning Board recommend to Council the adoption of an interim Checklist Ordinance which is to fill the time between the adoption of the Highlands Master Plan Element and the actual adoption of the Land Use Regulations. Then there is a section that was left over for future discussions which was really recommendations concerning any redevelopment areas in the town. It was basically an element within the Master Plan. We already did a Reexamination Report that we felt, at this time, was not really a part to include so it's being held open for a later date. So that's essentially the Reexamination Report. It's making the recommendations to consider the Highlands Element, so that's the first piece.

The Highlands Element itself is an outline of how the Township Master Plan will be modified to bring it into conformance. The conceptualization of the Highlands Regulations is that it acts as an Overlay District on the town's zone. In other words, the existing land use pattern that's established in town would remain but above that level of zoning would be an Overlay District where the Highlands standards regarding such things as density, such things as impacts on septic, sewer and water systems, on terms of how you calculate that density, and the specific uses within certain zoning classifications that the Highlands have would come into effect for those developments that actually are not exempt from the Highlands Regulations.

Under the current Highlands Regulations, there are a series of exemptions that apply to properties that exist prior to the adoption of the Highlands Regulations. Those individual lots and the activities that take place on those for all intense and purposes, are grandfathered and this ordinance would not apply to them. The Overlay District, the Highlands Regulations is really intended to direct future development. So all the things we are talking about tonight generally only impact development that is new, that is considered to be a major Highlands Development as compared to someone doing an addition to their house or developing an existing lot that has been around since the inception of the Highlands. The Highlands Element of the Master Plan outlines those areas of interest that would be modified to bring it into consistency; for example, it will establish intensities of use for residential areas based on nitrate dilution models. It will require Cluster Development in those areas outside of the Town Center in terms of future development for residential uses. It will have those types of impacts on the plan. One thing that is a little unique and I know I'm jumping around a little bit, but what is unique about Lopatcong is that the

Highlands has approved the Town Center designation which covers the majority of the development portion of the town. The Town Center designation itself will allow existing town zoning to remain in place and not be impacted by the Highlands Regulations. So it is a substantial portion of the town which will remain unchanged. The Town Center, if this is adopted, the perimeter around that would then be under the Highlands jurisdiction and would have regulations primarily relating to density of use that we brought into effect and there is within this area there are both standards for recommending standards to be considered for density, and intensity of development.

The town has been broken down into Environmental District, the Protection Area, the Conservation Area as such there are different types of regulations that would apply. It also defines areas in the town carbonate rock which I'm sure you are all familiar with underlies most of the town. The Township already has a Carbonate Rock Ordinance. The Highlands Ordinance would be supplemental to that. There would be regulations on water resource availability. These are all outlined in the Highlands Element of the Master Plan. The whole element is about 60 pages along with several maps that define the different areas. Essentially what the Board is being asked to consider tonight is the Board adopting the Highlands Reexamination Report which recommends inclusion into the Township Master Plan, the Highlands Element. I would also recommend that you consider adopting the Highlands Element of the Master Plan as a formal amendment to your Master Plan to make it clear that that element is amending the actual Master Plan. It's not just a recitation ...objectives and then the final thing to consider is the Checklist Ordinance and that is being considered only in the sense that it would be a recommendation to Council to adopt it. What the Checklist Ordinance will do if Council adopts it; will be to amend the process by which an application is reviewed by the Township Zoning Board of Adjustment and Planning Board. What it does is, if you come in with a development that is not exempt from the Highlands Act, the first thing you would have to do is have a consistency determination and what that is, is the development would go before the Highlands Council for a review and have a determination that the proposed plan meets the goals of objectives of the Highlands Master Plan. If it is determined that it does meet the goals and objectives, the hearing process would be the same as we do today, straight through as it is. If the Highlands determines that it is inconsistent, the applicant's application will not be deemed complete until it becomes consistent. So at that point, the application will remain at the Highlands until it is determined to be complete at which time it will be certified to come down here to hold the hearings. That's the Checklist Ordinance and that ordinance will remain in effect between the time the Highlands Reexamination portion of the Master Plan is amended and the adoption of the Highlands Regulations themselves. So there is a time period when that would be effective. After those processes are done, there is still a considerable amount of work for the Board that has to be looked at which is again nothing to do with this evening but we will have to evaluate the Highlands Development Regulations and decide if they are appropriate or make recommendations we feel are necessary to change those. We will have to adopt a Cluster Ordinance which we have to work on for inclusion in the Master Plan and eventually, Town Council's consideration. We will have to adopt a Town Center Ordinance which will have to go through the same process. Essentially be looked at by the Planning Board possibly recommend it to Council and then go through that process of adoption. So there are multi elements that still have to be done after this is complete. This is really like the first step in the final steps of completing consistency with the Highlands.

Chairman VanVliet: I'll open it to the Board for any questions.

Member McCabe: So all of these rules are going to apply to areas that are outside of the Town Center?

Planner Ritter: Essentially the rules, the Township is broken into two zones right now; the Planning Area and the Preservation Area. The Preservation Area is a very small area of the Township mostly the Highlands Area. Meaning the steeper sloping Highlands Area west of Rt. 519. These rules would apply essentially to the areas outside the Town Center. The Town Center is exempt from the Highlands Regulations. So essentially, those regulations, like the ordinance we have in place today or as we might amend them in a Town Center Ordinance. The primary area that this would impact would be the areas outside of that. If one is thinking about what is the advantage of that, if you remember back when this process started, one of the incentives, if you want to call it that, to essentially opt into the Highlands Planning Area, is that the DEP said that all permits for the extension of sewer and water could be directly tied to the recommendations from the Highlands Master Plan and what that effectively meant was is that any area that did not have sewer and water at the initiation of that process was not going to get it. You would not be allowed to extend sewer and water. The advantage of having the Highlands designate the majority of the Township as a Town Center, you will now be allowed to extend sewer and water service into those areas which also gives you a lot more control over your development pattern plus who you encourage or not encourage to be there. The other advantage of opting in is it does, even though everything is still up in the air on COAH, opting in does reduce the Township's housing obligation to provide affordable housing, numbers go down. There are not eliminated but they go down. No one knows where exactly COAH is headed right now. The other thing, for the average resident in town, these regulations on lots that predate the adoption of the Highlands really has little impact, they are exempt. They will operate under your old Zoning Ordinance or that old Zoning Ordinance as amended. The real impact going forward on the new development.

Member Coyle: So they can now put on additions and decks and whatever.

Planner Ritter: They, in the Planning Area, which is most of the town, the only rules they will have to follow is the underlying zoning rules that have always been there. If they were in the Preservation Area, that's already changed because there is a whole set of rules for that area. It doesn't have a lot of impact on ongoing, preexisting uses.

Member Coyle: Is this a forever thing you think?

Planner Ritter: Not at all. The thing I can say about this is that being part of this, there's two pieces to it. As we said, the town is broken into the Planning Area and the Preservation Area. The Preservation Area, the regulations that are in force on that area have been basically mandated from trend. That's not going to change. You can't opt out of the Preservation Area. The rules and regulations are going to apply there unless and when Trenton decides to change the rules or the DEP decides to change the rules. The Planning Area opting in or if the Township Council decides they want to opt in formally and adopt these rules, they're in it only as long as

they choose to stay in it. Council by vote can opt out. They can adopt all these regulations, set up this whole program and next week decide it's not right, then vote to leave, and they can leave. There is no penalty for leaving except as example, your Town Center designation would go away and that means that your ability to extend sewer and water to some of those areas may be limited. There is no financial penalty, there is no penalty in that sense coming out of it nor would there be a penalty that you, you basically revert back to your own zone. So there is no penalty in zoning. There would probably be some penalty in COAH; the numbers might go up slightly. Like I say, it is totally voluntary and it's at the Township Council's discretion and they can try it and if it works, fine, if it doesn't, they can opt out. They just have to vote and send them a letter.

Member Coyle: It sounds pointless.

Member Nash: Part of what I'm hearing it is not pointless because we have parts of the Town Center that are exempt that can't get sewer and water ever unless we go into this program. We'll never get to go to the DEP and ask for areas that aren't included in this to get sewer and water.

Planner Ritter: In the future going forward, if you didn't have the center designation, the extension of sewer and water is tied to the Highlands Land Use designations. The only area that the Highlands recommends the extensions of sewer and water is what they call their Community Zone and that unfortunately, when it was originally drafted, did not include large portions of the Township. The large portions of your Industrial Area even developed portions of the town ended up being in Agricultural Preservation and under those rules, DEP would not extend sewer into those areas.

Member Nash: But if adopted the only way we can expand or move out in that direction we have the opportunity to offer people that have homes but couldn't have sewer ten years ago.

Planner Ritter: Within the Township, within the Town Center, you can extend sewer and water if you have the gallonage.

Member Nash: Right you have to all the conditions but if you don't approve it, even within that area, you are kind of losing that opportunity all together.

Planner Ritter: Yes. That's one of the essential benefits.

Member Lance: Quite frankly, everything west of 519, Lows Hollow Road and up through Scott's Mountain would not be allowed sewer and water. Aqua has a gravitational feed off the top of Lows Hollow Road and the pipeline runs right down through the woods and everything else and that's what feeds all of Scott's Mountain. They don't have sewer but there's already water there. Those people really still have options to hook up to the water system if it's running through their property. Am I correct?

Planner Ritter: No.

Chairman VanVliet: No

Planner Ritter: If they are hooked up, they are fine.

Member Lance: Even if the pipe line is right on their property. They're not allowed to hook up?

Planner Ritter: No they will not be able to hook up. Whether the town does this or not, that's the world that's out there right now. Essentially, they can't hook up if we don't go forward and they can't hook up if we do.

Member Lance: It's already deeded where they already have right-of-way, utility right-of-way for their properties that because there is water there to be available if you didn't want to use your well.

Planner Ritter: If they're not physically attached to the line, I would say they would have a lot of problems making that connection.

Chairman VanVliet: Just a little more history looking back coming forward from 2004/2002 on up to this point, we were faced with a lot of COAH decisions with Builders Remedies, we were fearful of everything from Strykers Road to 519 was really open to huge developments. I mean five houses to the acre, really overloading a lot of the facilities we had in the Township. We're kind of unique in the fact that from the Phillipsburg border through Lopatcong Township, we're designated as an urban area and as we get down through Red School Lane, we are a suburban area and after Strykers Road, we're a rural area. These are actual hub designations of what the Township looks like and the quest to try and preserve what we had, we adopted a series of steep slope protections, we were trying to do all of those things that would prevent a court case coming to the Township and demanding that we allow this builder to build so many homes with COAH aspect to it also and we would have no control over it anymore. Similar to when Overlook was built up there that was an affordable housing decision that came here and that's how it got to provide sewer and water from Greenwich Township to Overlook. Trying to preserve some of the character of the Township, we're trying to preserve the area as a rural area from Strykers Road where the golf course goes along there, the Cline Farm, all of the farm area and slope area down towards 519 that's where the preservation area takes over and also on the other side, when we were looking at the other side of Rt. 57 which was our ROM, Industrial area, when the Highlands first came up, Ingersoll property was definitely Agricultural Preservation and could not be built on at all. That was one of our major highway industrial areas we looked at to provide commercial tax rateables. It took a long time, a lot of effort on a lot of people to get them to go forth and make that a Brownfield Redevelopment section which gives us a little more than just an Industrial Center designation and Strykers Road right up until the last couple years was off limits to any kind of sewer or water expansion. That now is included in the ROM and included that into the Industrial Center. So I think the Township is really in a good position to preserve the character we have and still has given us some room to develop commercially. It might not be the best economic time to look at what is going forward but at least we preserved that for the future where if something comes along and could go in there, it can go in there. If we lose those designations or the Township Council opts out, then we go back and not only do we lose those protections and guarantees, but probably the DEP would not entertain any type of extensions of the sewer and water. We also come against other agencies in government like the Smart Growth Agency; I don't know where they are.

Planner Ritter: Well you know that's a fair point. There is a requirement that all the towns will eventually have to conform with the Smart Growth Policies that are in the State Planning Commission right now. That was, the movement of that aspect of planning stopped with the hurricane. They were supposed to come out with amended policies, goals and objectives which at least to my knowledge has not been brought back out yet. The other advantage of this, if you want to say that, is if the town opts in and becomes consistent with the Highlands Regional Master Plan, is deemed to be consistent with the State Plan; you don't have to do any more than that. It is essentially, what is in this plan, will be accepted by the State Planning Commission. So it removes one more thing that you have to try and adjust the plan for if there is a consistency determination made in this case. The State Plan itself is not so much a land use plan as an economic model but the final version, I haven't seen so.

Chairman VanVliet: Well, they've been around a long time and with this we have some sort of a consistency we're looking at.

Member Hall: Just for clarification, it is the area east of 519 not the area west of 519.

Member Nash: I have another question. I know when you opt in you get some legal protection as well. Does that count for the entire town or just the outside communities?

Planner Ritter: They have indicated that the Highlands, if the Township zoning is ever challenged, the Highlands has indicated they will defend the ordinance. They will provide legal counsel. To what extent that is, I'm not sure but very clearly they will appear and defend the zoning of the Township.

Member McCabe: That's the zoning that's outside the town?

Planner Ritter: No that's the entire Township.

Member Nash: So then if we get sued by a developer that wants to come into our Industrial Zone and we don't feel it meets, the Highlands doesn't feel it meets, we want to turn them down, we get sued anyway, that would be the case where they would come in. They know our Industrial Park is in the community.

Planner Ritter: Yes, because one of the things that the Highlands is doing, or is asking us to do and quite frankly, until we develop the regulations, they determine consistency with their goals and objectives and if they find the project inconsistent, and the developer wants to sue, they basically have to defend. The Highlands Regulations have already been upheld by the courts.

Chairman VanVliet: One of the other things that's coming up lately, and our Councilman Mr. Belcaro, Council representative to Phillipsburg Sewer consortium, four or five sending districts to Phillipsburg, one of the things that's required in order for our Wastewater Management Plan to be approved by the DEP and the Highlands, is to adopt the Checklist Ordinance. Without that, they will not allow the Wastewater Management Plan to be implemented.

Member Nash: For all the towns in the group?

Chairman VanVliet: Well our town anyway, specifically if the other four towns pass that ordinance, they are ventured in. We are in a position where, at least our Wastewater Management Plan has been approved by the Highlands. It's waiting for DEP approval and they will not approve until the Checklist Ordinance is in. This puts us a little bit ahead of where the other towns are now. This may be affecting some of the improvements to the wastewater treatment plant itself. Number one, the relocation of the outfall from Lopatcong Creek directly to the Delaware River which would, I guess, improve some of their capacity right now because of the flow dispensation. It wouldn't affect the negotiations of what the sewer rate will be per gallon or anything like that. I think the town would be in a good position to have that Wastewater Management Plan approved especially what we are looking at, what they're proposing for Baltimore Street and the new pump station. The elimination of one pump station, I don't know all the particulars of that but that's involved in a lot of that. I don't know if the DEP even approved that if you don't have a Wastewater Management Plan approved now. I'm not in that position to make that call. They seem to have control of just about everything anyway. I think it would behoove us especially since we go forward on this. If we find out it's not working out, Council could always opt out of it.

Member Hall: We would probably not be alone if, I mean, if we see stuff going awry. I'm sure the other communities around us are going to start seeing that too and I think it be kind of like a ...

Chairman VanVliet: It's an interaction between the communities. I'm not sure you'll get total cooperation there.

Member Nash: But it also provides a check on the Highlands if they decide they're going to come and propose humongous controlling changes, we convey, not interested, and back out, and they can't touch our existing..

Chairman VanVliet: I think we are at a point now that we would really be advantageous to get the Wastewater Management Plan approved.

Member Belcaro: Right it's a win, win for us. Again, because we do have the option to opt out and like George said, there are benefits. It's going to impact either position or negative and those are the things you have to look at. If the time was to come that we need to revisit that and to choose to opt out, but I think that there is nothing to lose here.

Member Nash: But what if in the, I've worked with carbonate rock a lot, and in the Preservation Area they have larger lot sizes, they have constraints, they have stronger carbonate rock and that's just going to go on top of our already very tough ordinance, right?

Planner Ritter: Part of the process that we will be going through is for the Board to see, blend those ordinances, in other words, we will review our ordinance against theirs. If they are more restrictive in some places, we may choose to modify it. On the other hand, if we think we have a better ordinance than theirs, we will write that in. The recommendations from the Highlands is if

the town wishes to have more stringent ordinances, they can. They have to be approved by the Highlands. So part of the next step, if we get past this step, will be to mesh the Township's regulations, with the Highlands recommended standards before we ever send it to Council, try and get that mesh.

Chairman VanVliet: The actions we take tonight are by no means the final say on the Highlands by any means and we don't have that say, that's the Council's prerogative to pass the ordinance to opt in. We are looking more at the technical aspect.

Member Nash: Even if we recommend the adoption of the Checklist Ordinance, we can back out of this at any time.

Planner Ritter: Yes.

Member Nash: So is that even if we are in the process and we don't like their approvals or recommendations at any point, we can say no, we aren't.

Planner Ritter: Yes you can and there is multiple steps that we still have to do to bring, to mesh our ordinances with what will be the final set of ordinances with the Highlands consistency. It's a process that will take several more months.

Member McCabe: So getting back to the legal protection part, will they provide legal protection for cases from the point forward we adopt or are they going to assist in any current issues?

Planner Ritter: That's not a question that I can answer. My suggestion is they will defend the ordinance as it relates to consistency with the Highlands. In other words, I doubt they would, I don't know, but I doubt they would step into anything currently ongoing because technically it does not relate to the Highlands Regulations.

Member McCabe: Okay and also, getting back to the Scott's Mountain question. So Scott's Mountain, if we do this, they will now be in the Town Center Zone.

Chairman VanVliet: No. They are in the Preservation Area. That's mandated no matter what we do.

Member McCabe: If someone is in the Town Center that doesn't have water, they can potentially get water now.

Planner Ritter: Yes. When this is adopted, they could ask to get sewer and water connected.

Member Hall: The only area that doesn't have water and sewer is to the south of 57 right?

Chairman VanVliet: That's the ROM. You have certain areas that are in the Center designation between the Center designation like Belview Road Estates that are on septic also; some houses along Strykers Road are still on septic there. They are probably in conservation but I think we could make a good case that if they came to us, that they were actually in the Town Center.

Right now it is showing the case that they, we couldn't extend sewer to them, water at the time we approved the development. It had to go on septic's, that's why the lots are so large and I don't even know if we could approve it today the way the septic regulations are with the County Health Department. In the future, it might be to the towns advantage to have the sewer and stuff extended into there but if we tried to do it today, they would probably require with ten acre lots, similar to what Timberwick is required to do out there and dual septic systems.

Chairman VanVliet: Asked the audience if there were any questions.

Audience Participation: The Board addressed questions from the public.

Planner Ritter: The two things we are going to do here tonight are the adoption of the Reexamination Report and the adoption of an amendment to the Township Master Plan to include the Highlands Element which is a function of the Planning Board and that will end here. The recommendation to Council to adopt this Checklist Ordinance is just a recommendation and that will go up to Council and that will go through their normal hearing process of an ordinance and be referred back to the Planning Board for a consistency report and back to Council for final adoption.

Chairman VanVliet: If there are no further questions, if not, I would entertain a motion to adopt the Reexamination Report and to amend the Township Master Plan to include the Highlands Element.

Member Lance: I'll make that motion Mr. Chairman.

Member Nash: Second.

Chairman VanVliet: Beth can we have a roll call vote please.

Secretary Dilts: Members Belcaro – yes, Coyle – yes, Hall – yes, Lance – yes, McCabe – yes, Nash – yes and Chairman VanVliet – yes.

NAYS: None

Chairman VanVliet: May we have a motion to recommend the Checklist Ordinance to Council for their consideration.

Member Lance: I'll make that motion Mr. Chairman.

Member Belcaro: Second.

Secretary Dilts: Members Belcaro – yes, Coyle – yes, Hall – yes, Lance – yes, McCabe – yes, Nash – yes, and Chairman VanVliet – yes.

NAYS: None

Chairman VanVliet asked for a motion to adjourn the meeting. Motion by Member Lance, seconded by Member Nash. All in favor.

Respectfully submitted,

Margaret B. Dilts, Board Secretary