

TOWNSHIP OF DENVILLE  
PLANNING BOARD  
MINUTES

**March 9, 2011**

The Planning Board of the Township of Denville held its regular meeting on Wednesday, March 9, 2011. The meeting was held at the Township Municipal Building, 1 Saint Mary's Place and commenced at 7:30 P.M. Chairperson Filauro presided.

**Secretary Probasco read Notice of Public Meeting.**

**Roll Call:**     **Present** – Mayor Hussa, Chr. Susan Filauro, Vice Chr. Lou Maffei, Peter Nienstadt, Glenn Buie, Marilyn Kuntz, Gene Fitzpatrick, Kurt Schmitt, Mark London  
                  **Absent** - None  
                  **Professionals present** – Ed Buzak, Esq., Nicholas Rosania, PE, William Denzler, PP

**MINUTES**

**February 9, 2011**

Motion to adopt the minutes as amended was made by Mbr. Kuntz, seconded by Mbr. Fitzpatrick and unanimously approved by all members able to vote.

**PURCHASING**

Motion to pay vouchers submitted by The Buzak Law Group (dated February 4, 2011) subject to the availability of funds, was made by Mbr. Buie, seconded by Mbr. Kuntz and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by William Denzler and Associates (dated February 14, 2011) subject to the availability of funds, was made by Mbr. Buie, seconded by Mbr. Kuntz and unanimously approved by all Members present and able to vote.

**CORRESPONDENCE**

Chr. Filauro referenced the correspondence from the board attorney regarding Briar Rose stated that it will be discussed in more detail under New Business. Referenced the NJ Transit article indicating the project's suspension along with a letter from Senator Bucco. Monthly edition of the NJ Planner magazine.

**PROFESSIONAL COMMENTS**

The Township Engineer and The Township Planner had no professional comments.

Chr. Filauro asked Nick Rosania, P.E. to comment on the pending storm and further flooding situation. Nick Rosania indicated that the flooding is not unusual and that it has been occurring on an annual basis in the usual areas. Mbr. Fitzpatrick added that the Weather Channel was currently showing the flood level is anticipated to be 6.4' on Friday from our current 5' level. Mayor Hussa added that Mike, our OEM representative had indicated that the next storm may require a state of emergency municipality wide. Mbr. London commented that a call he received in last year regarding an emergency and to take appropriate action but nothing further about who the call came from. Mayor Hussa answered the police control the messages. Mbr. Nienstadt added that a taped message is distributed. Adding further that there is a new Nixel program on the DPD website and sign-on for emails, text or twitter messages.

Mayor Hussa commented on the recent NJ Transit hearing. Indicating that there had been no consent regarding the proposed program and that they pushed NJ Transit as far possible. Indicating that they should comply with our ordinances. Clarifying that we could not prevent NJ

Transit from coming before the board. Mayor Husa stated that the board did a great job. Chr. Filauro agreed with Mayor Husa and commended the board. Mbr. Kuntz suggested better public notification in the future to allow for better awareness. Chr. Filauro agreed that we would do our best to inform everyone and was not sure what else could be done besides the public legal notice provided. Mbr. Fitzpatrick applauded Chr. Filauro for taking a non-binding vote for the NJ Transit proposed signage. Further Fitzpatrick stated that the Council was prepared and all of Denville came together.

Chr. Filauro went on to recognize former Planning Board members for their service. Chr. Filauro commented on the volunteer positions of the board and the training, testing and time involved in being a member. Recognizing Howard Shaw, Donald Kuser and James Schoner. Thanking them all for their service and help and Howard Shaw specifically for his historical and fire safety information. James Schoner was not present to accept his award.

The plaque read: *In grateful appreciation of outstanding and dedicated service to the Denville Township Planning Board.*

## **PUBLIC HEARINGS**

### **Denville Land Use Ordinances # 3-11, #4-11 and #5-11**

The purpose of this hearing was for the Planning Board's review of the ordinances introduced and at the March 1, 2011 Municipal Council Meeting. Chr. Filauro turned the public hearing over to Bill Denzler. Suggesting that the best way to go through the information would be page by page. Bill Denzler replied that it may be best to review each of the ordinances while providing the highlights of each.

Ed Buzak, Board Attorney stated to the board that the purpose of the Planning Boards review is to determine whether or not that the ordinances are consistent with the Master Plan and if necessary, provide comments or recommendations to the ordinances to the governing body.

### **Ordinance #3-11 – Rental/Leased Residential Dwellings**

Bill Denzler, Township Planner stated that this ordinance was derived from health and zoning complaints, as well as the failed property maintenance from last year. The ordinance will address minimum care of lease and rental properties to include water, plumbing, heating, basic mechanical, sanitary sewer. Must be maintained. Several calls already this year. Simple calls such as no heat or no electricity. First part being simple definitions followed by the various subsections. To be controlled by the zoning and health departments.

Chr. Filauro opened to the board members.

Mbr. Schmitt commented that this ordinance is essential. Referenced Water system section, last sentence in Paragraph one regarding municipal plumbing code. Bill Denzler responded that there is a municipal plumbing code and it references the state. Mbr. Schmitt inquired about a minimum for the other hours to prevent the heat from being turned off completely and was otherwise satisfied with the bulk of the ordinance. Bill Denzler said this section was consistent with the State COAH for three plus family homes.

Mbr. Fitzpatrick referenced being familiar with all the ordinances due to workshops and heavily debated. Great job, comfortable with the ordinances and believes they will help residents.

Mbr. Buie agrees with all that is said. Commented the ordinances are long overdue and well written.

Mbr. Maffei inquired about smoke detectors. Bill Denzler confirmed that smoke detectors are covered under building code.

Mayor Husa commented that this is very necessary. Referencing a landlord with a stacking situation along with people without heat last year through health officer. Glad to see this move forward.

Mbr. Nienstadt concurred with fellow board members and commented being in favor of all and long overdue.

Mbr. Kuntz referenced Mbr. Schmitt's comment that a minimum be provided to avoid turning off the heat. Inquired if it applies to legal rentals as well as illegal to ensure everyone is covered. Bill Denzler responded that all renters will be covered. Illegal rentals will be cited as it is a court issue.

Mbr. London inquired about red-lined versions of the ordinances not seeing a comparison copy on the codes on the websites to reflect the changes. Bill Denzler stated that this is the only version. An email can be sent for a marked up copy. Mbr. London inquired about non-compliance of code and fine structure. Bill Denzler stated first offense is a written warning, next is municipal court with fines up to \$2K per day.

Chr. Filauro inquired about changes in bedroom definitions (i.e. room with closet), medical beds. Bill Denzler responded that not concerned about a closet, more of a real estate definition. Number of people does not matter; beds can be in every room. Chr. Filauro inquired about the exterior property. Bill Denzler defined as additional existing standards of safety, pieces of a home falling off, more to health and construction departments. Chr. Filauro inquired about maintenance. Bill Denzler stated if it's a public safety issue but not for basic maintenance. Ed Buzak, Esq. inquired about the heating exemptions for emergencies. Item 3 under water and Item H under the heating. Mayor Husa agreed that in the case of a broken furnace or water heater something should be included for extenuating circumstances. Ed Buzak stated it would be for limited for malfunctioning but not as extenuating. Bill Denzler stated that fixing services would apply under A.1(3) Intent and Purpose, certain responsibilities. Mbr. London inquired about having a maintenance time period. Bill Denzler answered no but that if they advised they have called for service this is taken under consideration before issuing a violation. Chr. Filauro opened to the hearing for public comment.

Donald Kuser was present. Councilman Kuser stated that during the council meeting James Norgalis, Health Officer had stated that the ordinance should be consistent with the state standard. Indicating that the state isn't concerned about the temperature getting down to zero in the house, only about the temperature being maintained at that time period. Stating that the temperature in the home cannot be lowered by 20 degrees and expected to build-up to the correct range by 6 a.m. It's too large a temperature swing in a home. Mr. Denzler stated that the zoning complaints are not overnight issues but of having no heat on an ongoing basis due to being shut-off or because of malfunctioning equipment. The Board Attorney interjected stating that during a public hearing you cannot speak to what someone else has said to prevent misrepresentation on a position. If the board has recommendations they should be sent to Council. Chr. Filauro stated that the board agreed to leave the recommendation on the hours in.

Howard Shaw was present. Councilman Shaw commented on beds in the living room for incapacitated, hospice, caregivers and those being rehabilitated. Stating that beds in rooms other than a bedroom do exist in homes. Chr. Filauro clarified that her reason for referencing the bedroom classification was related to a concern for a raise in tenant rent amount.

Chr. Filauro asked if there were more comments and there were none.

Mr. Denzler added that the memo with comments should state that the board found the ordinance consistent with master plans goals and objectives. Mayor Husa sought clarification on whether we would or would not be including the hours of heat. Mr. Kuser stated strike what he said and stated whatever the board wants stated. Chr. Filauro confirmed that we would leave the recommendation in for Council.

#### **Ordinance #4-11 – Sexually Oriented Businesses**

Bill Denzler, Township Planner provided an overview, stating it is not new to the zoning ordinances but new as a general ordinance code, Chapter 39. The purpose is to address the increasing concern for sexually oriented and adult businesses being located in the township. State code almost verbatim except for references to the Township of Denville and identifies several adult uses, their classifications, sexual activities and location requirements permitted for each of the uses. The ordinance creates setbacks from churches, schools, residential uses, public properties, display window contents and operations of the facilities. Current zoning ordinance fall under general retail and are a permitted use. This is the first step to address with additional language anticipated these and some additional adult uses in the coming month. Chr. Filauro added that the board should be aware that sexually oriented businesses are allowed in your community. That this isn't an elective decision but rather to impose restrictions. Nick Rosania added that it's similar to a cell tower as it relates to a zone. Ed Buzak, Esq. stated this is not a zoning ordinance, but establishes certain criteria or limitations if you are going to operate a sexually oriented business. A zoning ordinance may be down the road. But a regulatory ordinance that establishes certain criteria and constraints and limitations, other uses, buffers of public views and interior setup and nature. Mr. Denzler went on to state that the first part identifies the adult type of uses. Followed by activities that may or may not occur within these facilities. Goes on to address the location requirements limiting these facilities and their distances from public schools, residential zones, and playgrounds.

Mbr. London inquired if the locations were marked on a map of the township, if there be any location left for these types of businesses. Bill Denzler stated that there are areas within the business zones along Route 10 or Route 46 where these businesses could occur.

Mbr. Kuntz inquired about if a business would ever be closed down due to warnings and fines. Bill Denzler replied that it is the township attorney's position that this could potentially take place on any adult oriented business.

Mbr. Nienstadt inquired about the 1,000 feet and border. Bill Denzler responded that although Denville regulations couldn't be imposed in Randolph, it would affect any future Denville development.

Mayor Husa referenced receipt of an email relating to prostitution, parking at another location and walking, signs to prohibit parking. If any criteria could be created to prevent off-site parking. Chr. Filauo stated it would be more of a police matter. Bill Denzler stated that the community center could put up no parking signs to indicate parking for residents only.

Ed Buzak, Esq. commented that violations under this code can be prosecuted. Further qualifying this that on distances on already existing businesses if within 1,000 ft. of residential zones it may be grandfathered. Referencing section C. relates to an existing business and church comes after.

Chr. Filauo referenced D. under signage allowing up to three exterior, stated a maximum size exists and inquired if a minimum size exists. Bill Denzler stated that it matches the existing sign ordinance in town. The size of the minimum sign can be adjusted. Chr. Filauo inquired about obscene content. Bill Denzler responded that building department wouldn't approve obscene signage. Ed Buzak commented on minors and ordinance being directed towards maximum, point well made for notification sign to include a minimum size requirement. Further commenting that this is a first step and will not address all the problems that exist today. Chr. Filauo commented on 39-6 retail display. Ed Buzak spoke to the height intent being above minor eye level. Bill Denzler confirmed that not supposed to display less than 5'. Ed Buzak spoke to a fine line of constitutional rights that people have.

Mbr. Maffei commented that it generally covers what it should. Inquired about a former co-worker had a Sussex County business that was adversely affected by such a business.

Mbr. Buie commented on all the great comments already. On obscene materials on NJSA2C34-2 constitutional rights that a newspaper store wouldn't be affected by carrying Playboy or Penthouse magazine. The Board Attorney confirmed this was accurate.

Mbr. Fitzpatrick commented on a past public discourse for a food store in a certain area that could have been a sexually oriented business. Stating that an ordinance like this will help protect and characterize the community.

Mbr. Schmitt agrees with fellow board members. Well worth having. One inquiry regarding Section D. 1 this subsection shall not apply to existing businesses. The Township Planner responded pre-existing relates to the buffer if you are a pre-existing use not being required to provide the buffer. Mbr. Schmitt voiced his agreement with Mbr. Maffei that certain types of facilities be prevented from certain areas of the town.

Ed Buzak commented on typo in D, in second line – construct every portion thereof *if* should be *is* available to clerk. Also, stating that the other comment should be the minimum size of sign under D. 2. Bill Denzler added a typo in the first section that township *committee* should be township *council*.

Mayor Husa referenced movie viewing, if not Movie Theater under conforming.

Councilman Kuser commented on the ordinance coming from another town, written by the township attorney and township planner. Interior standards of having doors, only one person allowed, proper lighting and aisle ways are required. Having been upheld in another town. Spoke to the health, safety and well being of the Denville residents.

#### **Ordinance #5-11 - Fences**

Bill Denzler provided a recap of the ordinance for fences. Stating that three definitions were added to the fences and walls section of the existing ordinance. These definitions *were* requested by the construction department for clarity to include finished surfaces facing out, and elimination of 6' and 4' wall heights on lots less than 15,000 sq. ft. The additional language will help to tighten up the ordinance in assisting the Zoning Board of Adjustment in making decisions on applications.

Mbr. London referenced fences with both sides finished. Bill Denzler responded that this information would be on the construction detail and would be recognized by zoning.

Mbr. Kuntz sought clarification on required yards under the definition of walls and fences referring to setbacks. Bill Denzler stated yes the existing ordinance is not changing and refers to the setbacks. Mbr. Kuntz sought clarification of the front, rear and side yards of a home. Bill Denzler responded that anything from the front fascia of the house is considered the front yard. Further adding that the rear yard is from the rear fascia of the house. Mbr. Kuntz inquired about berm restrictions. Bill Denzler advised that no restrictions currently exist for berms. If it's a large amount of soil it would fall under the Morris County Soil Conservation District.

Mbr. Nienstadt had no questions.

Mayor Husa had none.

Mbr. Maffei inquired if walls includes concrete stacked walls. Bill Denzler confirmed and stated that more regulations exist for walls the under soil movement section. Mbr. Maffei inquired about 10% fences. Bill confirmed that this would apply to chain link and aluminum slat fences.

Mbr. Buie had no questions.

Mbr. Fitzpatrick had no further questions or comments.

Mbr. Schmitt inquired about inclusion of finished sides being applicable to walls as well. Bill Denzler stated that there are walls with finished sides and that this can be added to include walls as well as fences.

Chr. Filauro inquired about 10% in rear yard of residential zones as it relates to side yard setbacks. Bill Denzler responded that a fence can be placed directly on the property line. Zoning asks that the fence be setback the width of the post.

Mbr. London inquired about front and side yards as it relates to corner properties. Bill Denzler confirmed that a corner property has two front yards. Stating again that all three ordinances are consistent with the goals and objectives of the townships master plan.

## **ORDINANCES**

Chr. Filauro inquired if any members had any suggestions for new ordinances.

Mayor Husa referenced having a list which includes Jake Braking. Chr. Filauro referenced engine braking that makes a resounding sound that is a disturbing nuisance. Mayor Husa stated that Rockaway is one of the many towns that have instituted this. A handout on Jake Braking was distributed. Brick and Ocean County have recently adopted. Councilman Kuser stated that he thought Jake Braking is illegal in NJ. Chr. Filauro commented that we may have a lot of out of state truckers.

## **OLD BUSINESS**

Chr. Filauro asked Ed Buzak to bring the board up to speed on COAH. Legislature had passed a bill and sent it to the governor who conditionally vetoed the bill. Making changes that the legislature would have to make in order for him to sign it. The bill was withdrawn and remained vetoed. Senator Lesniak was to prepare a document of all the best, which is still in progress. Latest was to be introduced March 3<sup>rd</sup> but did not happen. Now only one more committee meeting and two more senate sessions before budget. Suspecting that we won't see anything for a few months. If the petition for certification is granted it will go before the Supreme Court. Growth share may go to the Supreme Court if the Legislature does not address the issue. Municipalities may find little has changed in the attitude if it goes before the Supreme Court. COAH still exists and remains to be resolved.

Briar Rose Group, Inc. provided a notice of appeal of the decision of Judge Bozenelis. Planning Board is required to file a case information statement. The appellate division will enter a briefing schedule. We will have 30 days to respond and the appellant (Briar Rose Group) will have 15 days to reply. Appellant has already requested oral argument which will put the trial out at least one year. If the Appellate Division upholds the trial court. Only have a right to go to the Supreme Court if there is a dissent among the appellate division. If the decision is unanimous among the Appellate Division the Supreme Court can be petitioned for Certification. Similar to the League of Municipalities, they have to ask the Supreme Court to hear the case.

## **NEW BUSINESS**

Chr. Filauro referenced the 8<sup>th</sup> Annual Municipal Summit and those interested in registration should notify the Board Secretary.

Chr. Filauro referenced the ANJEC workshop that she, Mbr. Schmitt and Mbr. London attended. Mbr. Schmitt referenced being unaware of how critical our water supply is in the state and how easily it can deteriorate if steps aren't taken to preserve it. Referenced Dr. DeVito as one of the great speakers and it being a beneficial program. Chr. Filauro commented on what appears to be heavily wooded areas that have been greatly impacted by white tail deer. Fenced off areas defoliated by deer have been photographed to show the regrowth over a period of seven years. Replanting is not required it occurs naturally. Culling of the deer in the Denville hunt was a good thing. Mbr. London referenced the annual offspring rate has doubled. Under stories regrow without replanting within seven to ten years allowing the habitat of small animals to return. Ground nesting and burrowing animals have disappeared due to the elimination of their habitats. Mbr. Schmitt referenced that the undergrowth recharges the groundwater supply system and minimizes the runoff and erosion. Mbr. London referenced that deer meat is not sold in New Jersey. If a value was put on deer meat it would increase hunting. Mayor Husa referenced the native plants are disappearing because the deer don't eat the invasive plants. It is alarming that the shrubbery is gone in the local parks. Mbr. London referenced the ANJEC information is available through the GIS system.

Chr. Filauro confirmed that GIS will also include regional maps. Chr. Filauro referenced that the County has loaded GIS for the townships that would be useful for the Master Plan and inquired if any members would be interested in being trained on GIS. Stating that a computer with GIS will be available in the community room. Mbrs. Maffei and London voiced interest in training.

Mbr. London inquired about the natural resources inventory. Bill Denzler responded that the last was done in 1977 and that efforts have been made to obtain a grant but no funding yet. The Environmental Commission would like a NRI for specifically for Denville which will combine the existing NRI with the Highlands information.

#### **ADJOURNMENT**

Motion to adjourn.

*Denean Probasco, Board Secretary*

Date adopted: April 13, 2011