

**MINUTES OF THE BOROUGH OF NORTH CALDWELL PLANNING BOARD
REGULAR MEETING HELD MARCH 20, 2023**

Chairman Brower called the meeting to order at 7:33 p.m. The following members were present:

ROLL CALL

PRESENT: Chairman Brower, Mr. Campbell, Mayor Raymond, Councilman Rees, Dr. Spinelli, Mr. O'Sullivan, Ms. Nathans, Mr. Roth

ABSENT: Mr. Fishbone

Others present: Mr. Dusinberre, Esq., Board Attorney, Tom Behrens, Board Planner, Mark Kataryniak, PE, Board Engineer

ADEQUATE NOTICE of this meeting of the Borough of North Caldwell Planning Board was given as follows: Notice was sent to The Progress and Notice was filed with the office of the Borough Clerk.

APPROVAL OF MINUTES

Chairman Brower requested a motion for the approval of minutes from the January 9, 2023 Reorganization Meeting. Member Campbell made a motion to approve the minutes and a second was made by Member Nathans subject to corrections noted by Member Nathans.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Ms. Nathans, Mayor Raymond, Councilman Rees, Dr. Spinelli, Mr. O'Sullivan, Mr. Roth,

ABSENT: Member Fishbone

NAYS/ABSTENTIONS: None

Chairman Brower requested a motion for the approval of minutes from the February 6, 2023 Conference Meeting. Member Nathans made a motion to approve the minutes and a second was made by Mayor Raymond subject to corrections noted by Member Nathans.

Upon roll call:

AYES: Chairman Brower, Ms. Nathans, Mayor Raymond, Mr. Campbell, Councilman Rees, Dr. Spinelli, Mr. O'Sullivan, Mr. Roth,

ABSENT: Member Fishbone

NAYS/ABSTENTIONS: None

ITEMS FOR DISCUSSION

Subdivision Ordinance

Chairman Brower summarized prior discussions regarding the Borough's subdivision ordinances and asked if additional questions needed to be considered. Mr. Dusinberre noted that Mr. Behrens might want to consider a provision in the ordinance which prevents a non-conformity from being created by a subdivision on another property. Chairman Brower asked Mr. Behrens to review his memo and revise the memo to see if additional considerations can be considered.

Chairman Brower asked if a motion to forward Mr. Behrens report to the Mayor and Council as it stands was appropriate and Mr. Dusinberre suggested the Board table the memo for possible modification so the Board can send a single letter of recommendations.

Mr. Behrens also noted that the definition of a minor subdivision should be evaluated as part of this memo. Chairman Brower asked Mr. Behrens to forward the revised memo to Member O'Sullivan. The Board agreed with the suggested approach.

Master Plan

Next, Chairman Brower introduced the topic of the Borough's Master Plan and noted that the topic was requested by Member Roth. Member Roth asked for clarification if the reexamination was a 2018 or 2019 plan. Mr. Dusinberre confirmed the plan was adopted in April 2019.

Mr. Behrens spoke to the criteria and the process of a master plan reexamination as defined by the Municipal Land Use Law. Mr. Behrens spoke to the affordable housing focus of the prior reexamination. The Master Plan was adopted in 1995 which includes a Land Use Plan. Member Roth asked if it was appropriate to draft a new Master Plan and Mr. Behrens spoke to the considerations that might be of interest by the Board when contemplating a decision on a new plan.

Chairman Brower noted some land changes which have occurred since 1995 and thought a new Master Plan might be considered favorably for this reason. Mr. Dusinberre noted that the re-examination would have considered these changes.

Mr. Behrens noted that Green Brook County Club's plans might trigger amendments to the Master Plan, Reexaminations or other supporting documents. Chairman Brower acknowledged this is a potential and a full update to the Master Plan might be best deferred until any such plan amendments are solidified.

Mr. Behrens briefly discussed the 17 elements of a Master Plan and noted that the Board could consider certain elements and possibly rule out other elements that are defined as optional.

Member Roth noted that the Land Use Plan should be updated so there is a baseline for any potential applications which are presented to the Board.

Councilman Rees asked which party would be responsible for determining such baseline documents. Mr. Dusinberre tried to clarify some misconceptions being discussed. He explained that each applicant is responsible for their own specific existing conditions submission. Mr. Dusinberre expanded that the Board and the Borough in its entirety has met prior obligations to get baseline submissions.

Borough Engineer, Mark Kataryniak, noted that the applicants should pay for as-built drawings as developments get built and these plans get appended to the Master Plan. Member O'Sullivan noted he has as-built drawings on file for recent developments for such consideration.

Member Roth asked about whether the Housing Plan was updated in the recent reexamination. Mr. Behrens provided additional context on the needs of the Housing Plan and the confirmed that the update performed in 2019 considered the Housing Plan.

Member Roth asked if a recycling plan was considered during the reexamination and Mr. Behrens noted he would need to verify but he believed it was performed as part of the Master Plan in 1995.

Member Roth asked if thoughts were given to goals/objectives for facility buildings. Mr. Behrens specified this was a goal rather than a requirement. Member Roth asked if it was the Board's requirement to focus on this plan and Mr. Behrens noted it should be the Board's responsibility to recognize the goal rather than establish the goal. Chairman Brower noted that these responsibilities fall with the Mayor and Council are outside the responsibility of the Board.

Impact Fee Ordinance

Chairman Brower introduced the topic of impact fees and deferred to Member Roth as it was on the agenda by his request. Member Roth asked if the Board could request the Mayor and Council to consider an Impact Fee Ordinance. Mr. Dusinberre spoke to possible examples and noted that the Board has the right to impose certain requirements as conditions of approvals. For example, the Board can require a developer to build a new watermain or pave a road if the need arises directly from the proposed plan. Chairman Brower noted that this has been considered and imposed by the Board through the process of a regular Planning Board hearing.

Mayor Raymond asked if there is a right to charge an impact fee and still obligate the developer to build a new sewer line. Mr. Dusinberre indicated that you need to choose one or the other. Mr. Dusinberre summarized that the Mayor and Council can consider an ordinance imposing an impact fee. Member Roth asked if a recommendation could be made by the Board. Councilman Rees noted that Mayor, Borough Administrator and himself have received the message and will consider it with the Mayor and Council if appropriate. Mayor Raymond noted that the Borough Attorney has already looked at it but it is not a standard practice and there is no legal and reliable precedent to fall back upon.

The Board spoke about the requirements imposed upon the developer of the subdivision on Grandview Ave. Mr. Dusinberre explained the considerations brought before the Board and conditions imposed by the Board during this application. Mayor Raymond noted he would bring this back to the Borough's General Counsel although he was fairly confident of the outcome, discussed earlier in the meeting.

Developer Fee Accounting Statement for Grandview Subdivision

An accounting of all fees and escrows was provided to the Board as part of the meeting packet. Member Roth asked if the fee considered within Section 107-98 of the Borough Ordinance was collected by the Borough for Grandview Ave. Member O'Sullivan indicated he would review the status of this fee and provide a response directly to Member Roth.

Penalties for Borough Code Violations

Member Roth asked if properties like 13 Soder Road would be subject to penalties. Mr. Dusinberre noted that this is typically a function of the Borough and outside of the Planning Board's jurisdiction. However, Mr. Dusinberre explained that violators usually have an opportunity to mitigate any such issues that arise during a project. Notices of Violation are usually provided with a curable timeframe and penalties are usually assessed thereafter, if cooperation is not offered. The Mayor indicated that he is aware that there are a number of mechanisms available in order to assess penalties accordingly. The Mayor said the Governing Body will consider amendments to certain ordinances or penalties if and where suggested at upcoming Mayor and Council meetings.

Chapter 107-45 Fees

Member Roth asked if Section 107-45 (Planning Board fees) should be analyzed. Mr. Dusinberre suggested the fee schedule could be analyzed. Member Roth asked if there could be a difference in fees between residents and non-residents and Mr. Dusinberre noted that is not legally permissible.

Mr. Kataryniak spoke to the thoughts behind an analysis of a fee ordinance and confirmed that all applications had to be treated fairly and equally. Mayor Raymond asked if Mr. Kataryniak could review the fee structure and make recommendations to the fees.

Chairman Brower noted a similar approach was considered for the tree removal ordinance. Mayor Raymond asked that the tree removal ordinance be re-considered and updated as well.

Annual Report of Zoning Board

Chairman Brower noted the annual Zoning Board report had been received and circulated and asked if there were comments from the Board.

Mr. Dusinberre asked if there was a way to prevent issues that were created by Pulte Hilltop with “doors to nowhere”. Mr. Dusinberre noted that the builder maximized the building envelope and placed future homeowners in an imposition with developed properties that could not legally build a deck/patio without a variance. Mr. Behrens acknowledged this as an issue in other towns as it relates to lot coverage and building setbacks. Mr. Behrens suggested that the R1 Zone might consider an amendment to the bulk zoning schedule that helps address this. Mayor Raymond asked Mr. Behrens to make sure his memo amendment includes this suggestion.

Mr. Dusinberre and Member Campbell referenced situations where the Zoning Board had limited applications in 2022 and the existing codes and setback requirements are possibly already stringent enough that it allows the Boards to hear each project on a case-by-case basis. Mr. Dusinberre noted that the 13 total cases referenced the right amount of cases and each case could be heard and possibly approved with the proper oversight. The existing process seems fair and appropriate.

Mr. Dusinberre noted that he cautioned the consideration of a floor-area-ratio (FAR). Mr. Kataryniak noted that FAR becomes difficult and confusing for residents to understand and preferred building coverage calculations over the FAR calculation.

RESOLUTIONS & MEMORIALIZATIONS

None.

APPLICATIONS & PRELIMINARY HEARINGS

None.

CITIZENS TO BE HEARD

Chairman Brower opened the meeting to the public and nobody was present. Chairman Brower then closed the meeting to the public.

ADJOURNMENT

Chairman Brower requested a motion to adjourn at approximately 9:06 pm. A motion was made by Mayor Raymond and seconded by Member Nathans. All members voted in the affirmative.

Kevin O’Sullivan
Planning Board Secretary