

**BOROUGH OF BERNARDSVILLE**  
**Mayor & Borough Council Meeting Minutes**  
**November 10, 2009 – 7:00 p.m.**

This meeting was called to order by Mayor Lee Honecker at 7:00 p.m. on Tuesday, November 10. Present were Council Members Joseph DeMarco, Charlotte J. Foster, John McCrossan, Joseph Rossi and Kevin Sooy. Also present were Borough Attorney John R. Pidgeon, Esquire, Sandra G. Jones, Borough Clerk/Assistant Administrator, and Ralph Maresca, Administrator/C.M.F.O. Council Member Edward McDowell was absent.

Also present were Paul Ferriero and Bob Brightly, Ferriero Engineering and Planning Board Members

**STATEMENT OF PRESIDING OFFICER**

Notice of this meeting was provided to the Bernardsville News, Courier News and the Star Ledger, filed with the Municipal Clerk and posted on the Municipal Bulletin Board on October 19, 2009.

**ITEMS OF BUSINESS**

Highlands

Mrs. Foster thanked the Highlands Committee (Don Knudsen, Chair, Terry Thompson, David Kane, Tom Carton, Kathleen Pierce Desjourdy, and Paul Becker) for their hard work and thorough analysis of the highlands material, an opinion, she said, has been echoed by the Executive Director of the Highlands and Dave Zimmerman, Borough Planner.

Mrs. Thompson, Mine Mount Road, said, "You put together this committee in January/Feb of this year. We began to meet and we tackled, first of all, on a block and lot basis, looking at the borough, checking the Highlands materials that they had given us in order for them to look at our lands and perform their buildout analysis. After several corrections, we got that back in the very beginning of July and it was a little surprising to all of us because they tagged our total buildout based on the highlands environmental rules and the highlands septic density rules, based on the amount of land it would take to meet their nitrate dilution standard, establishes septic density. They came out with a total buildout number to infinity, of sixty. They excluded some vacant land. For instance the golf courses I believe, certainly Roxitcus, was excluded from their calculations because they look at a member owned golf course as something that's going to be very difficult ever to develop because it's going to take every member's consent, so being realistic they didn't consider that developable. I believe Somerset Hills was included in their calculations, but of course Somerset Hills has streams and slopes and things that limit the possible development of that as residential land. Similarly, with the other biggest piece in town, Meadowbrook Farm, has streams, wetlands, and slopes, so it's not as developable as it might look driving by on 202. So we came here in July and told you about that and told you what those numbers were and we began to learn that the DEP will be/is, requiring every municipality in the state, through their wastewater planning process, to look at its septic density, if it has any septic areas that will not be served by sewers, and that would place constraints and require us to make zoning changes also. So we went back to look at all of this. We also have completed,

Don has completed with Sherry's help, the Highlands Environmental Resource Inventory, which is going to result in our getting some planning tools, some maps, that we do not currently have in the borough, that would result in a much clearer presentation of where the environmental constraints are with a parcel map, down to the block and lot number, which is going to be a remarkable thing to have even if we do nothing else. That's a planning tool that would be of great help. We also submitted a markup of their model Highlands Master Plan Element, but neither of these was anything but a draft. And then we sat down and worked on a summary report which you received on Friday, and that's where we are at this point. We have two choices, either decide to conform to the Highlands Master Plan and accept their model ordinances and their zoning constraints or do nothing and accept the DEP's model ordinances and zoning constraints that will be imposed on us through the wastewater planning process. Now, Bob and Paul have done, as you requested, some analysis of how those two standards, the DEP septic density standard and the Highlands septic density standard, would effect our current mountain zoning, and I'd like them to share that with all of us."

Mayor Honecker asked Mr. Ferriero to explain what he did and what we're looking at.

Mr. Ferriero said, "We took a subdivision that was recently approved by the planning board, the preserved property, and tried to look at that under the different scenarios. Under the Highlands ordinance and under the theoretical zoning that would come out of the county wastewater management planning process, that they are under direction to do by the DEP. I'll preface it by saying some of the information we're giving you is our best guess. This is an incredibly complex process that frankly I don't think anybody has thought through from beginning to end. I have probably spent more time in the last year on the Highlands than I have on any other subject in my entire career and it's just endless. I'll give you a quick snapshot of what we did with the preserve subdivision. It was a seven lot subdivision as approved by the planning board in the ten acre zone. The property is in the conservation zone of the Highlands. I'll talk about what those different zones mean, but those are some basic parameters. What we attempted to do was apply two different nitrate dilution models to the property. Now that's not so easy. We generally have an idea what it would be under the conservation zone standards of the Highlands model. Without going into a lot of detail, it comes out to be six lots geometrically instead of seven. That gets us past one major assumption I'll get to later, I have to make one big assumption for that and I'll come back to that. The other alternative was looking at it in the context of the county wastewater management plan. The problem with that is that under the wastewater management planning requirements of the state any WMP must be consistent with the Highlands regional master plan. It doesn't have to conform, it must be consistent. The rules for the wastewater management planning require that a WMP in the Highlands region be consistent with the Highlands regional plan. It doesn't require that you conform, it couldn't say that because opting in, by its nature is optional, therefore they can't require you to conform to it in that regard. So they had to figure out what they were going to do. Bottom line, it comes down to a nitrate dilution model. The nitrate dilution model generally used throughout the state uses a certain nitrate target, and a certain number of people per home, and is related to the watershed, and you get a lot size. In the Highlands region, there's another nitrate dilution model. The arithmetic model is essentially the same, but the info parameters are different. A couple of

examples. In the Highlands model, the assumption is four people per home, in others it's three. In the Highlands model, the recharge you use is drought recharge, in the non-highlands model you use average annual recharge. In the highlands model there are different nitrate dilution targets depending on whether you're in the conservation zone, protection zone, or the existing community zone. And that's where things start to get squirrely. Because in the standard model used everywhere but the Highlands, the nitrate dilution target is pretty simple, two parts per million, two milligrams per liter. That's what it is. It varies in the so called hybrid model. This is the model the DEP has created for highlands municipalities that choose to be consistent but not conforming. That would be the situation for Bernardsville if you do not decide to conform to match the highlands regional plan. A problem we had with the hybrid model is that no one we spoke to at DEP had ever heard of it or knew what it was. I was able to get some information from Morris County, which had been given some information on it and from Somerset County, who was able to get information on it. Their questions to me were, "well what kind of results do you get?" We had very inconsistent results. If we used the hybrid model and the county wastewater management planning, we came up with four lots on the preserved property if you assumed it was in the protection zone, but it's actually in the conservation zone. So in the conservation zone, I think it was five or six. Bob Brightly said it was more than that. In that regard, if you go through the wastewater management planning process and your current zoning requires a larger lot than the nitrate dilution model would lead you to, then there's no obligation to make your lot smaller. You don't have to do that. Your master plan is sound and supports the lot size you have. Frankly anything that comes out of these nitrate dilution models that supports that is good. But your master plan and your zoning is not based on a single parameter. You didn't decide nitrate dilution model is the be all and end all and we're going to base everything on that, which is good because the more support you have for your zoning the better off you are. Again, the differences are the lot sizes, I told you we made major assumptions about how we came up with that. The approved subdivision was seven, the conservation zone under the Highlands was six, and the protection zone under the county model was four, and it was three under the Highlands in the protection zone. Now, if you look at those lot yields, that's based solely on lot size. We looked at riparian buffers because under the Highlands you have to have a 300 foot buffer on any watercourse stream wetland. That didn't impact the lot yield. You also have steep slope ordinances that are required under the highlands, that didn't really impact the lot yield, it was essentially a geometric analysis. The one piece of the Highlands ordinance that will have a very significant impact on any development in the municipality that's not exempt is the tree removal portion of it. For all intents and purposes, you can't remove trees. So that means that rather than four or five or seven lots out of that property, you might get two, because you have to develop in the non wooded areas. There are provisions for tree mitigation plans, they're complicated at best. Terry Thompson said we have those in our existing ordinance. We do, but they are nowhere near, or on the order of magnitude they are under the highlands. Now just to finish a thought on these. Whichever way you end up going on this, the highlands have published their draft ordinances, it's 132 pages long, one of your requirements will be, if you decide to opt in, you've got to go through that, accept it, and submit it as your draft land use ordinance. It's an overlay ordinance that applies to all non exempt development in the borough. Now I have some philosophical issues with their master plan language but I won't get into that tonight. But, you will have that land use ordinance to adopt. Lets assume

for the moment you don't opt in. What do you need to do? In order for the borough to be consistent with the countywide wastewater management plan and for that WMP to be accepted by the DEP, there are certain other ordinances you need to adopt. You will need to adopt a steep slope ordinance; you have one. You will need to adopt a riparian buffer ordinances; you have one. You will need to adopt a septic management ordinance; I'll come back to that one. The steep slope and riparian buffer ordinances that you have are not identical to the models that are being kicked around, but that doesn't mean they will not ultimately be accepted by the DEP or they would need some minor modifications to be accepted by the DEP. The riparian buffer ordinance model that's out there is difficult to manage, I think one of the advantages, considerations is, many of those riparian buffers are already regulated under the flat hazard area rules and you're going to be regulated anyway. Any of the C1 watershed in the borough already have 300 foot riparian buffers. Maybe all you need to do is modify your ordinance to be consistent with that. That would be my recommendation on riparian buffer ordinances, make it consistent with that. As far as the steep slopes is concerned, frankly, I have to do more research to find out what exactly parameters the DEP is looking for in the steep slope ordinance. But I think yours is pretty close if it isn't already in compliance with what the county/DEP would require for your steep slope ordinance. So those are things coming down the road. As far as septic management is concerned, septic management is an interesting issue. When the current septic regulations, 7:9A were adopted in 1990, there was a whole section on septic management. It required a license to operate for every single septic system, it required pumping every three years, it required the municipality to set up an administrative agency to be able to deal with these, issue permits, require inspections and the pumping, and on and on. It didn't take very long for there to be a revolution. They said wait a second, the local governments can't afford this, the residents can't afford it, you got to pull it back. It didn't take long until they did pull it back. When the draft highlands ordinance came out, they included septic management ordinances that were very similar to the ones that were in the 1990 septic code. They were out there for comments, and when the revised model ordinance came out, they took those off the table. They said, we're not doing septic management now, we're going to deal with it in full plan conformance, what you're dealing with is basic plan conformance, so it's out there and it's going to come back. Now under the wastewater management plan requirements, you have to adopt a septic management ordinance. Would I be surprised if in the next four to six months the state says, wait a minute, we made a mistake again, let's pull that back. That might likely happen, I don't know. You're going to have to come up with a way to do this. What Somerset County has given the municipalities to this point, is you don't have to adopt a septic management plan, you don't have to adopt an ordinance to integrate and require all these things. What you have to do is develop a plan as to what you would put into these ordinances if you did, which is a lot easier to get your arms around, and is really in many ways consistent with what the DEP is requiring and in fact that is the latest guide from the DEP. Give us a plan on how you're doing it, we're not going to require that you adopt the ordinance to do it yet. So, the septic management end is kind of pretty much being treated the same way across the board. They're out there and they haven't quite figured out how to do it, and I think something will happen. What it becomes, I don't know, it's certainly an expensive proposition for the municipalities and the residents.

Terry Thompson said, "Basically the things they talked about, both at the Highlands and DEP are very similar in terms of what they would be requiring. I read the draft Highlands septic management ordinance and I talked about it with Cynthia Lee at the Bernards Township Health Department. They have had some experience because Morris County is a little ahead of Somerset County on the wastewater planning side. There are draft ordinances floating around."

Mr. Ferriero said, "There are draft ordinances right now. Since 1990, Randolph Township and Mount Olive Township have had septic management ordinances in place; so they're doing it. There are towns with in house existing health departments and staff already on site to be able to do that. Some lake municipalities are doing it as well."

Ms. Thompson said "that's an iffy question under either set of standards".

Mr. Ferriero said, "Something's going to happen, we just can't tell you what it's going to be."

Mayor Honecker said, "if we do nothing, then we're going to be faced with the DEP wastewater management plan standards. And under that, when you applied that to the Preserve, you came up with smaller lots.

Mr. Ferriero said, "Smaller lot sizes and potentially greater number of lots. We didn't actually do that subdivision because the zoning was more dense than your ordinance currently permits, so it was my opinion that you can leave your ordinance as it is, because that is consistent with those requirements."

Ms. Thompson asked Mr. Ferriero, "when you considered the Preserve as the protection zone, this is a subdivision which the Planning Board granted a cluster subdivision of seven houses, and if you treated that as Highlands protection zone, how did your lots come out for that?"

Mr. Ferriero said, "It's in the conservation zone but if we take it to another part of town and put it in the protection zone, it would be either four or five lots depending on whether you're talking about the county standards or highlands nitrate dilution model.

Mr. Knudsen said, "Most of the land we have on the mountain is in the protection zone. In a sense, we made a bad choice."

Ms. Thompson said, "Yeah, we picked a bad subject to work with. This is all we have, the magenta is the conservation zone, but most all of the green/aqua is protection zone."

Mr. Ferriero said, "The difference in those two areas, and that's why we end up with a different lot yield, is the nitrate dilution target is lower in the protection zone than the conservation zone. I think it's 1.87 versus 1.25 or something like that."

Mayor Honecker said, "those are sub categories in the planning zone?" Mr. Ferriero answered, "forget about the planning zone." Don Knudsen said, "the whole town is the planning area." Ms. Thompson said, "those are sub zones, we have conservation, protection communities".

Mr. Ferriero said, "the Highlands regional plan and local plan element and local ordinances are written in terms of zones, they are overlay zones. The planning area preservation distribution only has any applicability as it relates to your requirement to conform, and regulations currently by the DEP. Other than that, it doesn't matter and since you're all in the planning area, just worry about zones."

Ms. Thompson said, "Paul, did you and Bob reach any conclusion about what you thought the average lot sizes would be in the septic area if we contrasted the highlands to the DEP? I shouldn't say conclusions, but what did you find as a difference?"

Mr. Ferriero answered, "Under the Highlands, 23 to 25.5 acres per septic system, 13.9 to 15.5 under the county wastewater management based on the assumptions that were made with that calculation. What happens with that protection zone is your nitrate dilution target drops to that, .87 versus, I believe it's 2, that's used in the hybrid model."

Ms. Thompson said, "In either case, we are talking about essentially up zoning part of the mountain." Mr. Ferriero answered, "yes". Ms. Thompson said, "Above the existing 10 acre maximum". Mr. Brightly said "Some of that is 5 acre." Ms. Thompson said, "Keep in mind in either case, an existing lot will not be subject to these rules."

Mr. Ferriero said, "And that's where there's an awful lot of confusion, and there's a lot of confusion in the new rules and a lot of confusion in the ordinances. Let's try to take the easy one first, what if you go with the DEP and wastewater management plan. Let's say you have to up-zone to 14 acre lots. Lets start with that. A lot that exists in the zone that is substandard in size as a pre-existing non conforming lot. How is that treated in your ordinance? It doesn't really matter, you could put language in there that says a lot in existence as of the date of this ordinance, is not considered nonconforming relative to lot sizes. There are grandfathering provisions you can put into your ordinance to save those lots from that issue. Now as it relates to the highlands, there is a whole series of exemptions. One of the exemptions says if you are a single family lot and you are in existence and you do any improvements to that lot, you are exempt as long as the improvements are related to the single family use to that lot. Pretty simple. It becomes complicated when you come to the addition of a home office. Is that a single family use? That's where it becomes complicated, and is not so clear cut. The other exemptions are very clear. They are extremely fact specific. The highlands is prepared to create a series of exclusions that says the ordinance doesn't apply to this. Although, I am not sure of the distinction but they came up with the word exclusion because exemption was already being used as part of the Highlands act and exemption was already used, so they needed a different word. You have that scenario and the potential exemptions that exist out there.

Mrs. Thompson said, "Well, the exemptions come from the act itself. They were written into the law." Mr. Ferriero answered, "Yes, the exclusions are not in the act. That's why they had to call them exemptions."

Mayor Honecker read from a document and asked, "If a speculator had a house to sell how would this affect them?"

Mr. Ferriero answered, "If you owned a vacant lot before the highlands act and I want to buy it from you and build a house, I cannot get an exemption under that exemption and would have to meet one of the other exemptions that would apply. You would have to be under "disturbance and impervious surface on the site".

Mayor Honecker said, "So if a lot has been there, it's exempt but it cannot be more than an acre?"

Mr. Ferriero answered, "No, no, the disturbance can't be more than an acre and the new impervious portion can't be more than a quarter of an acre. If you're in the first category and you're doing it for yourself, you can do anything you want."

Mayor Honecker said, "There's no distinction going with the DEP model?"

Mr. Ferriero answered, "There's no distinction. You're zoning ordinance is your zoning ordinance. If you upzone, you can just do that and anybody who has a nonconforming lot can just go to the Planning Board of Adjustment."

Mayor Honecker asked, "We can create the grandfather conditions?" Mr. Ferriero answered, "Yes, that's part of your local zoning." The Mayor ask if there were question from Council?

Mr. Rossi asked, "If it's your lot you can knock the house down and rebuild it?"

Mr. Ferriero answered, "Yes, for yourself or for an immediate family member. Once you sell it the exemptions disappear. Here is a perfect example. If you have a lot purchased after the Highlands Act, you could go up to one quarter impervious surface, in order to get that exemption. You're going to have to put a conservation easement around everything outside your area of disturbance of your proposal. That sets the wall. There's language in the Highlands ordinances about some of the exclusions and exemptions as to ultimate land disturbance. I have a real problem with the way they're written. They say any manmade disturbance of the property, ever. Frankly this entire area was cleared at one time or another. So everything has been disturbed. Ultimately, I don't know how this whole thing will shake out but they're going to have to deal with that."

Mayor Honecker asked, "How's our impervious coverage restrictions compared to the quarter acre?" Mr. Ferriero answered, "Keep in mind that under the Highlands, there is no maximum impervious lot coverage. As far as they are concerned, if you can meet all the other requirements, you can pave

100% of your lot. There is no impervious limitation in any of the Highlands requirements. The Highlands has said to me on more than one occasion, there is no standard for maximum impervious coverage that's being promulgated by the Highlands. It just isn't there."

Mayor Honecker asked, "But if you want the exemption and again I'll read from the document." Mr. Ferriero answered, "You would be a major highlands development if you went beyond that quarter acre and there are ways to get major highlands developments approved. If you want to put a half acre impervious down and it turns out to be 75% of your lot area, there are no restrictions on the Highlands for that. There are other exemptions that may apply; for example, you can increase your impervious footprint by up to 25% as long as that increase isn't more than a quarter of an acre. So you go from a half acre to .625."

The Mayor asked, "Who provides those exemptions? Who does the property owner meander through this with?" Mr. Ferriero answered, "It depends. If you look at the model ordinance, some are delegated down to the local level. Others are managed by the Highlands Council."

Mrs. Thompson asked, "Is it fair to say that we're all of us functioning with the Highlands Council with no actual experience in how any of these rules would work? We know what they say to us but there is no backlog of actual experience because nobody has opted in. The deadline to sign up for the highlands for the preservation area is December 8 this year. Nobody's done it yet."

Mr. Ferriero said, "Nobody knows how these exemptions will be managed by the Highlands or by the local municipalities. All I can tell you is my experience with the exemptions in the preservation area. Effectively they are the same exemptions as managed by the DEP. There's nothing easy about it. I've had exemptions where they have looked at the area of a manhole cover as part of the impervious surface. I've had them consider the stone in a septic system below grade as impervious area. So, I don't know if they'll be looked at to that degree. At the Highlands Council the DEP literally has made me give them autocad drawings of my projects so they could check the curb width to see what the impervious cover was."

Mayor Honecker said, "Nobody's opted in to the preservation area?"

Mr. Ferriero said, "Let me go back to what the process is for a second. Opting in means opting in to conform to the plan. To begin that process by December 8 you would file a petition requesting the Highlands Council to review and consider your petition of conformance. On December 8<sup>th</sup> you have not opted in. What you have done is, you've presented them with a series of documents as a result of modules 1 through 6. Module 7 is the petition itself. You submit that to the Highlands Council they will review your petition, along with all the others they get, and determine if it's consistent with what they're looking for or not. Your petition will include either the master plan as they have written it or as you have made modifications. Some municipalities have made very substantial modifications to the master plan. The same thing with the ordinance. That documentation that you're submitting to them is not adopted on December 8<sup>th</sup>. It is submitted in

draft form. Sometime after, that Highlands will say yes this is good or, no you have to change these things. After that's done, you adopt those items and you have effectively completed basic plan conformance. For the next two years or so, then you have to get into full plan conformance where some of these unknowns start to get fleshed out like the more detailed ordinances relative to the Board of Health ordinances, the septic management, those kinds of things that haven't been figured out yet. So that's kind of the sequence of how opting in occurs."

Mrs. Thompson said, "We as a planning area town have no deadline to make a Highlands decision. The only deadline we are facing is that we have to submit a COAH plan by June 8<sup>th</sup> of 2010. We could wait two years if we wanted to and to see what is really happening out there and then decide if we wanted to move to the Highlands or not."

Mr. Ferriero said, "Terry, can I make a slight correction on that? The only way you get until next June for your COAH plan is if you submit the petition for conformance on December 8."

Mrs. Thompson disagreed, "No, excuse me Paul, that's wrong. That is not correct. I've got the COAH order right here and that's true for the preservation area but not for the planning area."

Mr. Ferriero said, "Alright. That's news to me because everybody has always told me that December 8<sup>th</sup> is the date for the COAH plan, but regardless of what the date is, Terry is right, the 500 lb. Gorilla in the room is the COAH plan and if you do not go through with plan conformance you have to develop a COAH compliant affordable housing plan. You have to submit that plan to them."

Mrs. Thompson said, "I looked at this very carefully so that if we decided tonight, or next week or in three weeks that we're not going to take a step now to conform to the highlands. I wanted to make sure we could still make the deadline for COAH so I got this resolution and read it carefully."

The Mayor asked, "Let's say we go and want to do the basic highlands plan and then you said later you have to do the full. Let's say they come back and there's unknowns in the basic so we're taking a little bit of a leap of faith, and there's complete unknown in the full. Let's say they come back with some draconian regulations in the full. Can we just bail out or are we simply locked in?"

Mrs. Thompson answered, "What they have told us is we can opt out, having opted in, if they make substantive changes in the rules they have promulgated. In that case we can opt out immediately but otherwise you're in for a six year period as with any other master plan."

A speaker asked, "What protection do municipalities have against highlands council rule changes during the six year rule plan period? The answer was "Withdrawal is the municipality's choice." The RNP, the speaker said, is a six year planning document that was adopted last year so 2014 is when it is due to be reissued.

Mr. McCrossan read from a document and asked, "As the act is voluntary for the planning area in the municipality, and if you don't agree with change, does that mean in effect we have opted out?"

Mrs. Thompson said, "This does not mean that if they change the RNP for instance, they have already done for us what they originally called our lake community zone and we said no, this is an abandoned quarry. This is not a lake community. That kind of change is NOT what they're talking about. They're talking about a change in the goals."

Mayor Honecker asked, "What are the unknowns in the highlands plan? Are we more at risk with that or with the unknowns in the DEP plan?" Mr. Ferriero answered, "I understand what you're saying but I have no idea what the answer is. Under both scenarios there is a certain degree of planning that's being pushed down from above."

Mrs. Thompson said, "I'd like to comment on that based on six month's work. I realized that the highlands staff is putting on nicey nicey faces with all of us in the planning area for the moment, but based on their responsiveness, turnaround time on questions and their general attitude, I would rather deal with them than the DEP, and I've done both."

In answer to a question, "If you opted into the highlands does that supersede the DEP in septic plans or do you get both thrown at you," Ms. Thompson answered, "The county and the DEP will accept the changes you make for the highlands as your wastewater plan. You don't have to do a second one. That was one of the benefits and I suspect that's why the borough's wastewater plan committee hasn't done anything since February when we found out that if we were pursuing the highlands we didn't have to work on that simultaneously."

Mayor Honecker asked, "So we're not under a time frame with regard to the highlands. Is our COAH plan prepared?" Ms. Thompson answered, "Pretty much and I would think that this DEP wastewater plan septic density..those facts would have to be folded into the arguments we would be making to COAH to lower their projections."

Mr. Ferriero said, "It's hard for COAH to say that the growth is going to be something that is effectively something illegal based on the DEP requirements. It would be very hard for them to sustain that argument."

Ms. Thompson said, "Very, and the other thing that we don't know since the election whether there will be changes in COAH. There's not going to be a change in the underlying Mt. Laurel requirements because they came from the court, the supreme court interpreting the NJ constitution. The COAH bureaucracy and its approach could change and we don't know that either. Most of the work on the COAH submission that we would have to make using COAH's original projections is done and if we decide to make a decision to go with the highlands and substitute the highlands buildout numbers, then that has to be rewritten. The plan would have to be rewritten and scaled way down."

Mayor Honecker said, "If I recall, we can submit our COAH plans and still opt into the highlands?" Mrs. Thompson answered, "Yeah, sure, we have no time constraints on a highlands decision. The only thing that's driving a time constraint is COAH."

Mr. Ferriero said, "Once the COAH plan is submitted the big change that happens is the scarce resource restraint that's in existence goes off. That's something that's kind of out there but doesn't affect a lot of things because there isn't a lot of development going on, but if there were that could have a big impact on it. Once your plan is complete then that scarce resource restraint is lifted from the municipality. You have until June to get that COAH plan in. Once that's in, basically you're in an indefinite time period to determine whatever you want to do."

McCossan asked for clarification on nitrate infiltration. Mr. Ferriero said, "Too many of these buildout analysis models take developable land and aggregate a gross number, run that through the nitrate dilution model and ignore the fact that you might have enough for four in two lots, but cannot subdivide because of the physical configuration. They might be separated by two miles but added together for the purposes of this bulk buildout number. In some ways it's a fiction and ultimately the actual affordable obligation you have is based on the actual growth that occurs. So if they say you can have 60 new lots but geometrically you only end up with twelve then your growth is based on twelve obviously."

A speaker asked, "That's a COAH model?" Mr. Ferriero answered, "That's any model. They all used a different land area. Highlands used the smallest land area. COAH used the biggest with the highest density to come up with their number."

Mrs. Thompson commented "But the highlands also in doing this buildout took into account....more of the .....

Mr. Ferriero said, "Highlands did the most realistic buildout analysis. More so than Somerset County and way more than COAH."

A speaker said, "We're in a lawsuit challenging their numbers, and the information it is based upon, and that may have impact as well. Another factor is that COAH, I don't believe, included in their buildout numbers, exemplary development." "Yes, that's correct, a speaker answered. So that means that number 60 they came up with is not the limit. You would have to look at all the existing lots in Bernardsville that could be built upon. Or downtown redevelopment. Or commercial development. Highlands said there isn't going to be anymore commercial development in Bernardsville."

Mr. Ferriero said, "You can do commercial development that meets an exemption that creates a growth share that has not been included in the Highlands numbers."

Mr. Knudsen said, "Right. Similarly we can have building on exempt lots that would contribute to ....(inaudible). In any model. If the growth occurs you have the obligation regardless what the model is. It just wasn't considered in their buildout number. It wasn't considered in anybody's buildout number. COAH just came up with a big high number."

Mayor Honecker asked, "Which is more restrictive in your opinion. Is it the Highlands or what's coming down the pike with regard to the wastewater management?"

Mr. Ferriero answered, "Based on my experience in the preservation area.... things that are going on... there's no question that the highlands will be more restrictive. We may not know everything relative to DEP but I don't believe it's going to be anywhere near as restrictive. Based on my experience in the preservation area but I'm extrapolating it to the borough if you opt in."

The Mayor asked, "Which option eliminates self-rule? Which option gives the state, or outside agencies, more say how we develop our options."

Mr. Ferriero answered, "Again..if you go to the wastewater management plan route you've got your zoning ordinances and you deal with that and you manage it just like you have in the past. If you opt in you sort of do that but there are a whole series of applications that require separate and sometimes prior approval by the Highlands Council, an additional level of review and approval that doesn't exist today."

Ms. Thompson said, "There's one other factor though that should be added into that. There is proposed legislation to make the state plan mandatory. We don't know what that will bring. Conforming to the Highlands Plan takes you out of the state planning process and the work we do every six years to cross acceptance in this that and the other thing. There is proposed legislation which may never go anywhere to give the Office of Smart Growth whatever they're calling it this week to give them much more authority over municipalities which once you've gone through cross acceptance you must then conform to the state plan. I'm not sure it's going anywhere."

Mr. Ferriero said, "Other guys overseeing what you do...Yeah, that's another unknown...The Office of Smart Growth has been completely gutted. The process of plan conformance has blown up to be such an ungodly process that I don't know if anybody has gotten through it. Two municipalities started the process but nobody got through it. I find it very hard to believe that they will be able to sustain their requirements in light of what's going on in the state relative to everybody's budgets. People don't have hundreds of thousands of dollars to spend on planning exercises. I have to believe it's going to be a streamlined process coming down the road. But that's my opinion, I have no idea what it's going to be....You have 566 municipalities in the state, two have actually completed a cross- acceptance plan and how the rest of them get done by June 8<sup>th</sup> of next year is beyond me with about three people running that office. Right now it's completely dysfunctional."

Mayor Honecker said, "We have about a million dollars which must be spent, that we're holding for moderate and low income housing and that has to be spent by 2012. If we opted we would have to spend it for that."

Mr. Ferriero said, "The affordable housing obligation that existed from 2004 to 2009 is still there. It has to be honored..you still have to do that."

### OPEN SESSION

Mayor Honecker opened the meeting to the public. Comments were made by Julia Sommers of the Highlands Coalition, Edward Fimbel of Mountain Top Road, who urged Council to get more information before making any decision, Eric Stiles of Hardscrabble Road, who spoke in favor of the Highlands option, Stephen Sciaretta of Mendham Road, who spoke in opposition to Highlands and favored keeping as much local control as possible, Gerry Jo Cranmer of Hardscrabble Road, who urged careful deliberation and public notice, and Chick DellaRusso of Mine Mount Road, who asked a question about increased costs to install septic systems under Highlands rules. Environmental Commission Members Pete Miller of Hardscrabble Road and Johanna Wissinger of Washington Corner Road spoke about problems with water in the area and urged council to provide all the facts in any public notice. Rich Nordling of Post Kennel Road spoke. Planning Board Member Hal Simoff spoke about concerns with Highlands rules. In answer to a question from Jay Shapiro of Anderson Hill Road, "if opt in, how long before final?" Mr. Ferriero said it would be at least six months from submission. Don Knudsen, Planning Board and Highlands Committee member, urged a decision in the next few weeks. Tom Carton of Stevens Street said a decision to opt in now is premature. The Mayor closed the public session.

Mr. Ferriero recommended that we continue to gather information, authorize Mr. Mondok to seek additional grant funds, and in the meantime, give Mr. Zimmerman the go ahead to develop COAH plans. It was decided that Council will deliberate on the question of launching Mr. Zimmerman, and in the meantime, to ask him how much time he will need.

Mr. Rossi moved **Resolution #09-183, RESOLUTION TO GIVE MIKE MONDOK THE AUTHORITY TO SUBMIT A GRANT INCREASE REQUEST TO THE HIGHLANDS COUNCIL FOR THE INITIAL ASSESSMENT GRANT AND PLANNING GRANT.** Mr. DeMarco seconded, and the motion was approved with six yes votes.

### ADJOURNMENT

It was moved and seconded to adjourn the meeting at 9:30 p.m. Motion carried unanimously.

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BOROUGH CLERK