

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
SPECIAL MEETING
January 20, 2009
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER

The special reorganization meeting of the Board of Adjustment of the Borough of Mendham was called to order by Chair Santo at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ. This meeting was scheduled as the regular reorganization meeting of January 6, 2009 had been cancelled due to the weather.

CHAIRMAN'S ADEQUATE NOTICE STATEMENT

Notice of this meeting was published in the Daily Record on January 12, 2009 and Observer Tribune on January 15, 2009 in accordance with the Open Public Meetings Act and was posted on the Phoenix House bulletin board on January 8, 2009.

SPECIAL PRESENTATION

Mayor Henry presented each Board member with their New Jersey Office of Smart Growth certificate for the successful completion of the Basic Course in Land Use Law and Planning. Volunteer pins were also presented.

OATHS OF OFFICE

Mr. MacDonald, Esq. administered the following Oaths of Office:

Bryan Seavey – Regular Member: 12/31/12
Michael Palestina – Regular Member: 12/31/10

ATTENDANCE

Mr. Palestina – Present	Mr. Seavey - Present
Mr. Peck – Present	Mr. Smith - Present
Mr. Peralta – Present	Mr. Santo - Present
Mr. Schumacher – Present	

Also Present: Mr. MacDonald, Attorney

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PUBLIC COMMENT

Chair Santo opened the meeting to public comment or questions on items that were not on the agenda. There being none, the public comment session was closed.

2009 REORGANIZATION

Election of Chair: Mr. MacDonald, Esq. assumed Board leadership for the election of the Chair. Mr. Schumacher made a motion nominating Mr. Santo as Chair. Mr. Peralta seconded. There being no additional nominations, the nominations were closed.

ROLL CALL: The result of the roll call was 6 to 0 with 1 abstention as follows:

In Favor:	Palestina, Peck, Peralta, Schumacher, Seavey, Smith
Opposed:	None
Abstentions:	Santo

The motion carried. Mr. Santo was elected Chair. He assumed leadership of the Board.

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Election of Vice Chair: Mr. Peck made a motion nominating Mr. Seavey as Vice Chair. Mr. Palestina seconded. There being no additional nominations, the nominations were closed.

ROLL CALL: The result of the roll call was 6 to 0 with 1 abstention as follows:

In Favor: Palestina, Peck, Peralta, Schumacher, Smith, Santo
 Opposed: None
 Abstentions: Seavey

The motion carried. Mr. Seavey was elected Vice Chair.

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Election of Secretary: Mr. Seavey made a motion appointing Ms. Callahan as Secretary and Recording Secretary. Mr. Peck seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Palestina, Peck, Peralta, Schumacher, Seavey, Smith, Santo
 Opposed: None
 Abstentions: None

The motion carried. Ms. Callahan was appointed Secretary.

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Meeting Dates Approval: Mr. Santo presented the following resolution that had been included in the pre-meeting packages:

**RESOLUTION
 BOROUGH OF MENDHAM
 BOARD OF ADJUSTMENT
 MEETING DATES**

BE IT RESOLVED that the Board of Adjustment of the Borough of Mendham will meet to discuss or act upon public business at 7:30 p.m. prevailing time on each of the dates set forth below, at the Garabrant Center , 4 Wilson Street, Mendham, NJ:

Tuesday, February 3, 2009
 Tuesday, March 3
 Tuesday, April 7
 Tuesday, May 5
 Wednesday, June 3
 Tuesday, July 7
 Tuesday, August 4
 Tuesday, September 1
 Tuesday, October 6
 Wednesday, November 4
 Tuesday, December 1
 Tuesday, January 5, 2010

BE IT FURTHER RESOLVED that notice of any additions to the above schedule or change in the time, date or place of any scheduled meeting will be posted on the bulletin board in the Phoenix House and delivered to the official newspapers in advance as required by law.

With respect to matters presented to this Board by applicants, the public shall be heard during the hearing on the application in accordance with the procedure as established by the Municipal Land Use Law.

Mr. Seavey made a motion to approve the resolution. Mr. Palestina seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Palestina, Peck, Peralta, Schumacher, Seavey, Smith, Santo
 Opposed: None
 Abstentions: None

Ms. Callahan will make appropriate public notice.

Designation of Official Newspapers: Mr. Santo presented the following resolution that had been included in the pre-meeting packages:

**RESOLUTION
BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT**

BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham, Morris County, New Jersey as follows:

WHEREAS, Chapter 231 of the Public Laws of the State of New Jersey for 1975, known as and hereinafter designated as the "Open Public Meetings Act" aforesaid, the Board of Adjustment of the Borough of Mendham hereby makes the following designations:

1. The Observer Tribune and the Morristown Daily Record having been designated by the Governing Body as the two official newspapers to receive notice of meetings required by any and all sections of the Open Public Meetings Act, it appearing that said newspapers are most likely to inform the local public of such meetings. Notices required by the New Jersey Municipal Land Use Law or the Borough's Land Use Regulations may be placed, as required by law, in either of the designated newspapers.
2. The location for posting of notices of meetings shall be the bulletin board in the Phoenix House, 2 West Main Street, Mendham, NJ, where notices of this kind are normally posted.
3. The sum of \$12.00 per year is hereby fixed as the amount to be paid by any person requesting individual notice of meetings as provided in Section 13 of the Open Public Meetings Act.

Mr. Peck made a motion to approve the resolution. Mr. Seavey seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Palestina, Peck, Peralta, Schumacher, Seavey, Smith, Santo
Opposed: None
Abstentions: None

The motion carried. The resolution was approved. Ms. Callahan will make appropriate public notification.

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Appointment of Board Attorney: Mr. Santo presented the following resolution that had been included in the pre-meeting packages:

**RESOLUTION
BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT**

WHEREAS, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Board Attorney services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and,

WHEREAS, the business administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

WHEREAS, James H. MacDonald, Esq. has submitted a proposal indicating that he will provide legal services for 2009 in an amount projected to exceed \$17,500 (including escrows); and

WHEREAS, the anticipated term of this contract is 1 year; and

WHEREAS, James H. MacDonald, Esq. has completed and submitted a Business Entity Disclosure Certification which certifies that he has not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one year, and that the contract will prohibit him from making any reportable contributions through the term of the contract; and

WHEREAS, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

WHEREAS, the Board of Adjustment of the Borough of Mendham wishes to retain James H. MacDonald, Esq.; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for "professional services" without competitive bids and the contract itself must be available for public inspection.

NOW THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain James H. MacDonald, Esq. to serve as Board Attorney for the year 2009, at a total cost not to exceed \$2,500, such sum as may be duly appropriated for the purposes in the duly adopted municipal budget for 2009; and escrows as required; and

2. This contract is awarded without competitive bidding as a "professional service" in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.

3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.

4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).

5. This Resolution shall take effect as provided herein.

Mr. Seavey made a motion to approve the resolution. Mr. Smith seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Palestina, Peck, Peralta, Schumacher, Seavey, Smith, Santo

Opposed: None

Abstentions: None

The motion carried. Mr. MacDonald, Esq. was appointed Attorney. Ms. Callahan will make the appropriate public notification.

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Appointment of Consulting Engineer: Mr. Santo presented the following resolution that had been included in the pre-meeting packages:

**RESOLUTION
BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT**

WHEREAS, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Consulting Engineer services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and,

WHEREAS, the business administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

WHEREAS, Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated has submitted a proposal indicating that he will provide engineering services for 2009 in an amount projected to exceed \$17,500 (including escrows); and

WHEREAS, the anticipated term of this contract is 1 year; and

WHEREAS, Paul W. Ferriero has completed and submitted a Business Entity Disclosure Certification which certifies that he has not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one year, and that the contract will prohibit him from making any reportable contributions through the term of the contract; and

WHEREAS, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

WHEREAS, the Board of Adjustment of the Borough of Mendham wishes to retain Paul W. Ferriero.; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for "professional services" without competitive bids and the contract itself must be available for public inspection.

NOW THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Paul W. Ferriero PE & PP of the firm Ferriero Engineering Incorporated to serve as Consulting Engineer for the year 2009, at a total cost not to exceed \$2,500, such sum as may be duly appropriated for the purposes in the duly adopted municipal budget for 2009; and escrows as required; and

2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.

3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.

4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).

5. This Resolution shall take effect as provided herein.

Mr. Seavey made a motion to approve the resolution. Mr. Peck seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Palestina, Peck, Peralta, Schumacher, Seavey, Smith, Santo
 Opposed: None
 Abstentions: None

The motion carried. The resolution was approved. Mr. Ferriero was appointed Board Engineer.

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Appointment of Board Planner: Mr. Santo presented the following resolution that was included in the pre-meeting packages:

**RESOLUTION
 BOROUGH OF MENDHAM
 BOARD OF ADJUSTMENT**

WHEREAS, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Planning Consultant services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and,

WHEREAS, the business administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

WHEREAS, Adrian P. Humbert, AICP/PP of the firm Adrian P. Humbert Associates has submitted a proposal indicating that he will provide planning services for 2009 in an amount projected to exceed \$17,500 (including escrows); and

WHEREAS, the anticipated term of this contract is 1 year; and

WHEREAS, Adrian P. Humbert has completed and submitted a Business Entity Disclosure Certification which certifies that he has not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one year, and that the contract will prohibit him from making any reportable contributions through the term of the contract; and

WHEREAS, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

WHEREAS, the Board of Adjustment of the Borough of Mendham wishes to retain Adrian P. Humbert.; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for “professional services” without competitive bids and the contract itself must be available for public inspection.

NOW THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Adrian P. Humbert, AICP/PP of the firm Adrian P. Humbert Associates to serve as Planning Consultant for the year 2009, at a total cost not to exceed required escrows for 2009; and

2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.

3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.

4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).
5. This Resolution shall take effect as provided herein.

Mr. Seavey made a motion to approve the resolution. Mr. Palestina seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Palestina, Peck, Peralta, Schumacher, Seavey, Smith, Santo
 Opposed: None
 Abstentions: None

The motion carried. Mr. Humbert was appointed Planner. Ms. Callahan will make the appropriate public notification.

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Approval of Annual Report: Mr. Santo presented the following 2008 Annual Report that had been included in the pre-meeting packages:

**BOARD OF ADJUSTMENT
 BOROUGH OF MENDHAM
 ANNUAL REPORT 2008**

LACKLAND, BRUCE, application for C variance for 7 ft. deer fence in the front yard at Block 2601, Lot 2.11, 14 Balbrook Drive: **Resolution of Approval 1-2-08**

THOMAS, JAMES, application for Minor Subdivision with variances related to Land Preservation Acquisition at Block 1801, Lot 38 and Block 2201, Lots 1,2, and 3: **Resolution of Approval 2-6-08**

R. BELLUSH ASSOCIATES, INC., application for interpretation and use variance to use a portion of an existing frame office for residential use at Block 601, Lot 9, 20 East Main St. (Historic District) **Resolution of Approval 4-1-08**

BENEDETTO, SUZANNE KIALL, application for use variance to permit a home office that exceeds the permitted maximum size at Block 203, Lot 84, 65 West Main St.: **Withdrawn**

OMNIPOINT COMMUNICATIONS, INC. and New York SMSA Limited Partnership d/b/a VERIZON WIRELESS, application for use variance for a 120 ft. +/- monopole (flagpole) at Block 801, Lot 20, Kings Shopping Center: **Continued to 1-6-09**

FASANO, JEAN, application for Minor Subdivision and variances at Block 2301, Lot 2, 175-179 Cherry Lane. **Resolution of Approval 12-2-08**

ANDREW, STEVE J. & LESLEY ANNE, application for hardship variances for construction of an addition that violates impervious coverage and building footprint coverage at Block 301, Lot 65, 3 Bockoven Road. **Resolution of Approval 6-4-08**

JEBARA, GHADA, application for hardship variance for construction of gate, pillars walls and fencing in the front yard in excess of 4 ft. in height **Resolution of Approval gate, pillars, walls. Fencing Denied. 9-3-08**

CANTALE, LORNA & TONY, application for hardship variances to construct (1) porch that violates the front yard setback and lot coverage and (2) fence that violates front yard setback and height at Block 301, Lot 12, 11 Village Circle. **Resolution of Approval porch. Fencing Denied. 9-3-08**

KOBI GROUP, INC., application for use variance and site plan for Block 1401, Lot 5, 69 East Main St. (Main Street Corridor): **Withdrawn**

ROSEN, LAWRENCE, application for C variance for 2 new and 2 existing piers with lighting fixtures not to exceed 8 ft. 2 in. in height and 1 new gate hung from the piers not to exceed 8'2" in height and a fence installed on proposed wing walls not to exceed 5'4" in height at Block 2001, Lot 1.07, 5 Charolais Farm Road. **Resolution of Approval 11-5-08**

LEVEY, DONNA & YALE, extension to previously approved hardship variance for Block 1401, Lot 19, 90 Talmage Road. **Resolution of Approval 11-5-08**

MARKHAM, RICHARD & SUSAN, application for Hardship Variance to permit construction of piers, gate and wing walls with fence that exceed the height requirement. in the front yard.:
Continued to 1-6-09

**SUMMARY OF CASES
 2008**

In 2008 there were 13 cases placed on the Board of Adjustment calendar. Out of those 13 cases, 9 were decided, 2 were carried to 2009 and 2 were withdrawn.

APPLICATIONS ON CALENDAR		13
APPLICATIONS CARRIED TO 2009		2*
APPLICATIONS APPROVED		9
APPLICATIONS APPROVED W/CONDITIONS OR MODIFICATIONS	9	
APPLICATIONS DENIED		2*
APPLICATIONS WITHDRAWN		2

In terms of the types of variances issued, 3 applications dealt with “c” variance approvals for fences, gates/pillars on the south side of town. Minor Subdivisions of the Thomas and Fasano properties were approved. Two “c” variance applications for home additions were approved as well as a use variance for residential use in the Historic Business District.

TOTAL APPLICATIONS COMPLETED		9
“C” VARIANCES	5	
“D” VARIANCES	2*	
MINOR SUBDIVISIONS w/VARIANCES	2	
EXTENSION TO VARIANCE TIMEFRAME	1	

APPLICATION FEES

In 2008 the Board of Adjustment collected a total of \$41,395 distributed as follows:

TOTAL FEES COLLECTED		\$41,395
APPLICATION FEES	\$ 4,000	
ESCROW	\$37,190	
COPIES/TAPES	\$ 30	
SEWER APPLICATION FEES	\$ 175	

*Duplicate Counting. Fencing denied in two other applications that were approved

**Includes Use Variance for Fasano Property

Mr. Seavey made a motion to approve the annual report as written and to send it to the Council.
 Mr. Peck seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Palestina, Peck, Peralta, Schumacher, Seavey, Smith, Santo
 Opposed: None
 Abstentions: None

The motion carried. The annual report was approved. Ms. Callahan will forward it to the Council.

ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Santo adjourned the meeting at 8:00 p.m. The next regular meeting of the Board of Adjustment will be held on Wednesday, February 3, 2009 at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Diana Callahan
Recording Secretary