

November 10, 2007

Mayor Bernard O'Brien
Holland Township Municipal Building
61 Church Road
Milford, NJ 08848

Mayor O'Brien:

At the November 7, 2007 public hearing on Ordinance 2007-18, creating a new Village Residential-A (VR-A) Zoning District, you requested that members of the public who pointed out misrepresentations and flaws in the ordinance during the public comment period submit letters summarizing their testimony.

I said at the hearing and repeat here that this is a severely flawed ordinance and should not have been adopted with its infirmities. Instead, adoption should have been postponed, the ordinance rewritten so that flaws and false statements are corrected, the abutters re-noticed with the accurate acres for Galloway Farm, and a new public hearing scheduled.

This letter summarizes the substance of my comments at the hearing. I will be looking for an amended ordinance.

Wrong lot size given for Block 6, Lot 61

Both the Notice you signed to abutters and the ordinance itself give the wrong number of acres for Block 6, Lot 61 (Galloway Farm). The ordinance itself claims in Section Two, which amends Section 100-4, "Boundaries; Zoning Map," that this lot is "approximately 3.825 acres" (top of page 3). I spoke on October 30 with Holland Township Tax Assessor Michelle Trivigno, and she confirmed that tax maps show Galloway Farm as 4.97 acres, and after taking out the right of way for the roads (as the ordinance specifies) it's **4.825 acres**. Michele cautioned that the 9 acres for Block 10, Lot 47 (the Purcell lot) is very approximate because it hasn't been surveyed in recent years. However, the Galloway Farm lot was surveyed quite recently. When the Galloway property was subdivided into three lots, the map filed with the county clerk on November 30, 2001 also shows Block 6, Lot 61 at ± 4.825 acres.

It could be that the acres mistakenly given in the ordinance are minus the one acre that must be subdivided off with the existing house. However, this is in error because Section 100-50.4 D (1) clearly says that the "density shall be calculated prior to subdivision of the tract to create a lot around the existing residential structure."

All of this supports my contention in the next section that the ordinance is unclear as to the maximum density allowed. Even those who wrote the ordinance

apparently find it difficult to follow its rules. The planning board should not have to enforce such an unclear ordinance.

This error in stating the size of Galloway Farm is not insignificant. It leads directly to an underestimate of the maximum density allowed. Anyone believing the 3.825 acres given in your letter to abutters and in the ordinance would add 3.825 to 9, resulting in 12.825 acres, then multiply by 1.05 for a **density of 13.47 units**. But the calculation using the correct 4.825 acres added to 9 yields 13.825 acres, which when multiplied by 1.05 gives a maximum **density of 14.51 units**.

The language of the ordinance must clarify the maximum density allowed

Even using the correct figure of 4.825 acres does not yield a clear answer. The correct answer for the formula may be 14.51, but does that mean 14 or 15 units, and does it include or exclude the existing farmhouse?

The public has consistently been told (in the Petition for Plan Endorsement, in the Interim COAH Round 3 Plan) that the plan is for six age-restricted, market-rate units and six affordable units with no age restrictions at Galloway Farm. Since there are already two units in the existing farmhouse, then presumably the correct answer is 6 plus 6 plus 2, yielding 14.

Section 100-50.4 D should have two more subsections added (after the present one that clarifies that the density is to be calculated prior to the subdivision of the lot with the existing residential structure). Something like this:

2. If the product of the density calculation is not a whole number, then that product should be rounded downward to the nearest whole number.
3. The permitted maximum density includes both number of units in the existing residential structure as well as new construction.

The second WHEREAS on page 1 is a false statement

The second WHEREAS on page 1 claims that the “proposed hamlets **are** served by sewer and water **infrastructure**.” But the **actual water pipes stop at the Holland School** and would have to be extended south on Route 519 to serve the North Hamlet, including Galloway Farm. On top of that, the DEP hasn’t approved the sewer extension to the back of Galloway Farm, where the apartments are proposed. In the proposed South Hamlet, the sewer extension also awaits the DEP’s approval of either the township’s WMP or Mr. Jiovino’s site-specific application.

Infrastructure means actual pipes in the ground. A water and sewer service area means just lines on a map.

The ordinance fails to mandate that the required affordable units must be applied against the township's COAH Round 3 obligations

The first WHEREAS on page 1 notes that the township has been accumulating obligations under COAH's Round 3 plan since January 1, 2004. It should also note that there are a number of subdivisions that will likely be issued Certificates of Occupancy (COs) in the future, but the obligations triggered by these COs must be fulfilled by the township because these projects have received at least preliminary approval and will therefore be exempt from any future Growth Share ordinance that would require developers to pay for the obligations they create.

However, the ordinance does not require that the affordable units created in the new VR-A district must be used to satisfy the COAH Round 3 obligations that have accrued and will accrue to Holland Township itself. It leaves open the possibility that the developer of the "planned unit residential development" in this district could claim that these affordable units should be credited against the developer's own future subdivisions. A COAH Pre-Paid Plan, as I called it.

I would like to see Section 100-50.1 B. 2 have a sentence added at the end that says something like, "The COAH credits for these low and moderate income units shall be applied against Holland Township's current obligations under COAH's Round 3 plan."

The fourth WHEREAS leaves out the Goals and Objectives of the Holland Township Master Plan that are not consistent with this new district

This section cherry-picks the goals that are less problematic and omits two for which consistency cannot be demonstrated.

This section omits mention of the second goal: : "2. To **preserve, protect, restore and enhance** the outstanding natural resources in the Township, including **rare and endangered species**, forests, steep slopes, flood plains, headwaters and wetlands." As you know, township officials have been using the municipal budget to pay the township professionals to lobby the DEP for months to ignore the critical habitat on the Galloway property so a private development can be built.

This section also leaves out Goal 16: "To **preserve and protect the character** of archeological sites and **historic structures**, districts, sites and landscapes throughout the Township." Hunterdon County included the Galloway Farm property, known by its old name of the Godly Farmstead, on its list of "Sites of Historic Interest." The County cites not only the stone house (second oldest in

Holland) but also says the farm is “Noted for its well-preserved complex of structures.” It’s hard to see how putting a dozen apartments on the property will preserve and protect the character of these historic structures.

At the least, the ordinance should be modified to mandate that the historic outbuildings be included in the lot to be subdivided with the existing residential structure, and that this “well-preserved complex of structures” should not be knocked down during construction of the new units.

The section on Common Open Space makes promises that cannot be fulfilled

Section 100-50.4 B on page 5 mandates that “at least 75 percent of the VR-A Zoning District shall be set aside as common open space.” As discussed earlier, the total acres in the district are 13.825 acres. So 10.37 acres must be set aside as the 75 percent Common Open Space. After subdivision of the minimum one-acre lot with the existing residential structure, that leaves 3.825 acres to accommodate the proposed 12 apartment units. Thus, very little of this Common Open Space will fit on the Galloway Farm property.

Clearly, most of the required 10.37 acres of Common Open Space will have to be across Route 519 on the nine acres of Block 10, Lot 47. This would create several problems.

- Residents, including seniors living in the age-restricted units and children living in the affordable units, would somehow have to cross a heavily-trafficked county highway, at the busiest intersection in the township, to get to this Common Open Space.
- As shown in the Holland Township Natural Resources Inventory, Block 10, Lot 47 is entirely encompassed by the 300-foot buffers on both sides of the C-1 stream running through the property. In her May 9, 2007 comments to the Highlands Council, township planner Betsy McKenzie acknowledged that “Block 10, Lot 47, is 100 percent environmentally constrained.”
- The ordinance says uses of the Common Open Space “May include active or passive recreational facilities, required buffer areas and common or private gardens.”
- During a planning board discussion of wood turtle habitat on Galloway Farm, David Grossmueller, the Environmental Commission representative on the board, acknowledged that the stream on the Purcell lot is ideal wood turtle habitat, used for hibernation and breeding. In a board discussion of another subdivision, where a backyard would contain such habitat, Dr. Grossmueller said that fences should be erected to prevent disturbance of a wetland transition area and critical habitat.

- The reality is that the DEP is highly unlikely to allow recreational facilities and gardens within a SWRPA (Special Water Resources Protection Area), so the entirety of the Purcell lot will likely be off-limits for any activities.

If this ordinance is applied to other properties in the future, the picture painted of recreation and gardens in the Common Open Space may have some resemblance to reality. But in the case of these two lots, promising 75% Common Open Space when 65% of the property is totally constrained by a SWRPA is deceptive.

Sincerely,

Michael Keady