**August 9, 2016**

The Special Meeting of the Governing Body of the Borough of Bloomingdale was held on the above date in the Council Chambers of the Municipal Building, 101 Hamburg Turnpike, Bloomingdale, NJ. Mayor Dunleavy called the meeting to order at 7:12 p.m.

## SALUTE TO THE AMERICAN FLAG

Mayor Dunleavy led the Salute to the Flag.

## ROLL CALL

*In Attendance:* Mayor: Jonathan Dunleavy

Council President: Michael Sondermeyer

Council Members: Anthony Costa

John D’Amato

Richard Dellaripa

Dawn Hudson

Ray Yazdi

Professionals Municipal Clerk: Jane McCarthy, RMC

*Present:* Borough Attorney: Fred Semrau, Esq.

**PUBLIC NOTICE STATEMENT**

Mayor Dunleavy stated that adequate notice of this meeting was posted in the Bloomingdale Municipal Building and provided to The Suburban Trends; The North Jersey Herald & News; and all other local news media on July 22, 2016.

**Second and final reading and public hearing of Ordinance no. 20-2016 – AH1 Overlay Zone**

The Municipal Clerk read the public notice statement.

Councilman Costa moved that the ordinance be read by title; seconded by Councilman Dellaripa and carried on voice vote.

**ORDINANCE NO. 20-2016**

**OF THE GOVERNING BODY**

**OF THE BOROUGH OF BLOOMINGDALE**

**AN ORDINANCE OF THE BOROUGH OF BLOOMINGDALE, COUNTY OF**

**PASSAIC AND STATE OF NEW JERSEY ESTABLISHING SECTION 92-61.1**

**OF THE BOROUGH CODE KNOWN AS THE “AH-1 (AFFORDABLE HOUSING)**

**OVERLAY ZONE”**

**WHEREAS,** the Borough of Bloomingdale recognizes the importance of complying with its Affordable Housing obligation; and

**WHEREAS**, the Borough presently has an “AH” (Affordable Housing) Zone which was implemented with the purpose to effectuate a Superior Court Order in the matter of DR Horton Venture v. Borough of Bloomindale and Planning Board of the Borough of Bloomingdale, pursuant to §92-61 of the Borough Code, which pertains to the development of 32 acres of land to be utilized for the construction of an inclusionary development site; and

**WHEREAS**, the Borough seeks to comply with the Court Order and provide Affordable Housing consistent with same, however it is also important that the Borough establish a realistic opportunity for the development of this site which has a contour that necessitates significant site preparation in order to achieve an economically feasible and realistic development; and

**WHEREAS**, the Borough also seeks to achieve the goals and objectives of its Master Plan and the Borough Reexamination Report; and

**WHEREAS**, the Mayor and Council also seek to continue to encourage economic growth and development in the Borough in a manner that is consistent with these plans and the overall goals and objectives of these planning documents; and

**WHEREAS,** the Borough recognizes that quarrying on Federal Hill has existed since the early 1900s; and

**WHEREAS,** with appropriate land use controls, the Borough is considering the expansion of such quarry operations, as long as it is in conjunction with the goal of achieving the Borough’s Affordable Housing obligation and complying with existing Court Orders to obtain such compliance. In order to achieve this goal, the Borough seeks to provide an incentive to adjacent, adjoining or the existing property owner of the Affordable Housing site if they were to provide site preparation in order to achieve a realistic development opportunity for inclusionary Affordable Housing in the Borough.

**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the Borough of Bloomingdale that the Borough Code is hereby amended to establish an “AH-1 (Affordable Housing) Overlay Zone” as follows:

**SECTION ONE.** The Code of the Borough of Bloomingdale is hereby amended to establish the following Section:

**Section 92-61.1.**

1. **Background:** It is the purpose and intent of this section to provide for necessary Court ordered Affordable Housing by providing zoning incentives to establish a realistic opportunity to develop such housing.
2. **Purpose of AH-1 Overlay Zone.** The AH-1 Overlay Zone shall provide, after meeting the requirements of such Overlay Zone, for quarry and mining operations due to the presence of resources suitable for mining, but at the same time also recognizes the necessity for appropriate regulation of the excavation of these resources. Accordingly, the permitted uses for property located in the AH-1 Overlay Zone shall be those set forth in §92-58 entitled M-1-Q Light Industrial and Quarry Zone, subject to the property owner first obtaining site plan approval to insure that such properties shall be operated in a manner that properly and adequately addresses issues of erosion, drainage, and possible dangers associated with steep mining faces, while facilitating the reclamation of the site for ultimate development in a manner consistent with the underlying zoning, upon completion of the quarrying and mining operations**.**
3. **Requirements of AH-1 Overlay Zone.** The AH-1 Overlay Zone provides for an incentive for the development of the property known as Block 5105 Lot 14 (formerly Block 105 Lot 14), commonly referred to as the “Meer Tract” as such incentives benefit the adjacent tract which is Block 5105 Lot 84 commonly referred to as the “Bloomingdale Quarry Tract”.
4. Block 5105, Lot 14, commonly known as the “Meer Tract”, consists of 180 acres of vacant land of which 35 acres have been Court Ordered and approved for a multi-family inclusionary development containing 360 residential units. Accordingly, approximately 145 acres of land remains on the Meer Tract. Due to the significant site development cost, and the inability to develop this site for the past ten years, this AH-1 Overlay Zone provides for contiguous property owners, or the owners of the tract, to the 35 acres of inclusionary development to engage in the use of mining and quarrying, providing that, as a prerequisite, the use includes extensive site preparation of the 35 acres in an expedited manner for the Affordable Housing development of the Meer Tract. Such site preparation, which is defined as extraction and grading, must be in accordance with a commitment to develop the Affordable Housing as to the Meer Tract and the corresponding site preparation must be completed in order to qualify for this AH-1 Overlay Zone.
5. The aforesaid site preparation work shall be the equivalent to the extent of rock extraction and levelling that would have otherwise been required as part of the site preparation work contemplated by the preliminary and final site plan approval granted to D.R. Horton, One. – New Jersey and Bloomingdale Joint Venture by the Bloomingdale Planning Board pursuant to its Resolution #618 memorialized on June 19, 2008.

**(iii)** So long as the owner of the Bloomingdale Quarry Tract, provides site preparation to the 35 acres of the Meer Tract property as set forth above, to the satisfaction of the Borough Engineer, the remaining portion of this Zone as it pertains to Block 5105, Lot 14 shall qualify for this “Affordable Housing OverlayZone**”** and the zoning district and development standards, except as noted in this Section, §92-58 entitled M-1-Q, Light Industrial and Quarry Zone, shall apply.

1. The AH-1 Overlay District is established as an overlay zone to the AH Affordable Housing Zone. The AH-1 Overlay District is shown on the Zoning Map attached hereto as Exhibit A and made a part of this Chapter which is Block 5105, Lot 14. Any development standards not expressly provided in the AH-1 Overlay District shall be governed by the standards in the M-1-Q District. Where there is a conflict between the development standards provided for in the AH-1 Overlay District and the development standards provided for in the underlying zoning district, then the development standards of the AH-1 Overlay District shall apply.
2. **Development Standards.**

When a land owner complies with the requirements of this AH-1 Overlay Zone, the provisions of the M-1-Q, Light industrial and Quarry Zone, Borough Code §92-58 and the provisions contained therein shall apply to land located within this zone subject to the following restrictions or limitations

1. The existing quarry operations provides for shipping and transportation of materials and products to and from the quarry. Such existing hours of operation would remain the same and not eligible for extension until such time that a new access road onto Union Avenue from Wanaque is established whereby vehicles would utilize Union Ave for a short distance before intersecting with entrance ramps for interstate 287.

1. The existing quarry and material processing are buffered by quarry walls to the North, West and South, and to the East Route 287. The AH-1 Overlay requires that the primary material processing operation must be maintained on property that is located in the M-1-Q zone and adjacent to the AH-1 Overlay in order to minimize disturbance and benefit from the present location of the process operations and the existing buffers of a quarry wall on Route 287. This overlay zone shall provide that the property owner may only conduct quarrying and mining operations. The ancillary and support functions shall not generate noise which would be perceptible outside of the quarry. In accordance with a phasing of the project that is marked on the map referenced as Exhibit B with Phase 1, Phase 2 and Phase 3. Quarrying and mining operations may not proceed to a succeeding phase until the quarrying and mining in the preceding phase has been completed. All quarrying and mining is subject to Federal and State laws and regulations, including but not limited to New Jersey Department of Environmental Protection’s rules and regulations and notwithstanding anything else referenced in this Ordinance or the Borough’s Code, all activity on the site in the AH-1 Overlay Zone is subject to site plan approval from the Borough Planning Board. The principal structures utilized in the crushing and processing operations shall be located within the Bloomingdale Quarry Tract and may not be located on the Meer Tract.
2. With respect to access as to the AH-1 Overlay Zone, there shall be no access provided with respect to the AH-1 Overlay Zone except from the adjoining quarrying operation and site. Any other access to the Overlay Zone will only be for the purposes of emergencies and permission by the Borough.
3. **Additional Requirements and Regulations.**
4. All quarrying operations shall be subject to the requirements of §92-25**,** as amended, with the exception that hours of operation shall be governed by the AH-1 Overlay District restrictions only.
5. All quarrying operations shall be subject to the requirements of §32-2, as amended, with the exception that (i) hours of operation and (ii) backfill and quarrying operations shall be governed by the AH-1 Overlay District restrictions only,.
6. Where a proposed use abuts a residential zone boundary line, the set-back for quarrying activity shall be 300 feet which shall be a planted buffer with sufficient height to provide reasonable year-round screening, as approved by the Borough Engineer, will be required where vegetative screening does not exist.
7. **Setbacks and Restrictions**:
8. This Zone provides that where the boundaries of the properties adjoin or abut a residential zone, reasonable year-round screening, as approved by the Borough Engineer, will be required where vegetative screening does not exist. An overall 300 foot undisturbed buffer and conservation easement shall be provided for additional screening from adjoining residential districts.
9. All quarrying operations must comply with all Federal, State and Local guidelines.
10. The access to the property shall be permitted from an adjoining quarry property site so long as the contiguous owner consents to such access and which is approved by the Planning Board in the form of a Site Plan Approval. There shall be no other ingress or egress access to the property except for emergency uses.
11. As long as the access to the site is from Union Avenue, Wanaque, the hours of operation of this site shall be:

* Shipping and transportation are permitted at all hours.
* Ancillary and support functions, such as material movement within the site and maintenance activities, may operate at all hours.
* Drilling is permitted between the hours of 7:00 a.m. and 5:00 p.m., not including Saturday, Sunday and legal holidays.
* Blasting may operate between the hours of 8:00 a.m. and 5:00 p.m., not including Saturday, Sunday and legal holidays.

All operations activity must be in compliance with all noise regulation provisions of N.J.S.A. 13:1G-1 et seq. and N.J.A.C. 7:29-1 et seq.

1. An escrow of $5,000 shall be established on an annual basis to provide for the Borough conducting appropriate and necessary inspections of the operation of the site to confirm compliance and areas of disturbance are in accordance with approvals.

**SECTION 2.**All ordinances of the Borough of Bloomingdale, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

**SECTION 3.**If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

Councilman D’Amato moved to open the Public Hearing on this ordinance; seconded by Councilman Dellaripa and carried on voice vote.

Linda Huntley, 86 Van Dam Avenue, spoke about Borough Attorney approaching her attorney after the meeting in July to see if the issues raised could be resolved. There was a discussion in regard to saving portions of Meer tract in exchange for s portion of Bi-Coastal property.

Ms. Huntley stated that this proposed idea may not be taken care of until sometime in September; if she is to file a lawsuit in regard to the ordinance, there is a timeframe to do it and September will be too late.

Borough Attorney stated that he did advise this in a memo and the Governing Body has not met formally to discuss this issue which would absolutely be the intention to look at Bi-Coastal to preserve as much as possible on the 140 acre Meer tract.

Ms. Huntley asked why we are moving the ordinance this evening and Mayor stated that I believe to get Green Acres to consider doing so, the ordinance may give leverage for that to happen.

Borough Attorney stated you have 45 days to file suit and I would hope we can come to an agreement; it is entirely Ms. Huntley’s call as to lawsyit.

Borough Attorney stated that this concept is something that I was asked to look at and that has a very good result for the entire Borough; I was asked to work on it and brink back a contract for that property. The ordinance is on a stand alone basis. It would be good to see if all or a portion of the property that borders Van Dam has a Green Acres restriction on it because everyone then knows.

(Councilman Yazdi entered at this time, 7:23 p.m.)

Ms. Huntley stated that she would hope we would be saving Federal Hill which is under a conservation easement.

Elliott Ruga, Policy Director of NJ Highlands Commission, stated that the summary on Bloomingdale’s affordable housing strictly January 29, 2016, has gross misrepresentations and outlined some, fact that Borough opted out of the Planning Conformance so that the ordinance would not be scrutinized by the Highlands Commission; area does not have sufficient sewer and water; it is deficient. Order was signed by the Executive Director in 2008 as to DEP would take no action on issuing permits in conservation protection zones as delineated in the Highlands Plan. It will not be approved by the DEP.

Borough Attorneys stated that he would argue that is something that can be approved by the Sate at this time. Court Order references the Highlands Act but it was of the mindset that this is the least resorted. This is not a development application.

The ordinance does not allow quarry expansion unless the affordable housing is achieved.

Mr. Ruga stated that there are adopted regulations that guide COAH that do not allow affordable housing in environmentally sensitive PA5 areas.

Tony Granado, NJ Sierra Club, reinstated their opposition to the ordinance. Stated that this area is one of the most environmentally sensitive in the area and this would be one giant frame parking lot. It will disturb C-1 streams and believes there is no legal justification under the zoning law to some an area as such; will cause irreversible damage to the Highlands.

Wilma Frey, NJ Conservation Foundation, suggest and urge that this Council achieve a wiser path for affordable housing; the smart way is 100% affordable housing units. There are non-profit groups who develop 100% affordable Housing units. They are less stressful on the water supply resources for the municipality. Felt it is good for this council to get this stupid development out of the way and do not think the Judge cares how you do the development. Ms. Frey felt there must be another way to develop and not jeopardize this environmentally sensitive area.

Ross Kushner, Pequannock River Coalition, read a letter into the record putting a list of objections. Noted that the Otteau Report and Reading Reports had misinformation as well as assumptions.

Discussion in regard to a land donation of ten million dollars.

Mr. Kushner stated that the actions of the Mayor and Council border on unethical and criminal

Dan Hawkins, 6 Pearl Street, spoke in regard to contradictory statements in (G1 1 and 3; Borough Attorney disagreed and stated that 3 is a continuation of 1.

Felt that you may be opening the door to offer this property as an access way.

Joseph Carrieri, 17 Brandt lane, spoke in regard to the flooding in this area and stated that can the Mayor assure him that he will have no flooding due to this project.

Mayor and Councilman D’Amato spoke in regard to the fact that this area floods for year and no one can assure that it won’t flood.

In regard to access off Brandt Lane, Mayor stated that there will be access from Brandt Lane. Until they receive access from Wanaque off of Union Avenue which was always the plan behind the DPW on Union.

In regard to rodents in the area, Mayor stated that Mr. Carrieri should let him know and he will have property maintenance review.

Mayor stated that based on the studies we had done, there will be no additional flooding but no one can guarantee that.

Dee Maharg, Union Avenue, asked where the entrance will be and Mayor stated that the plan all along was on Union Avenue by the DPW.

Mrs. Maharg express concern as to trucks going in and out; Mayor stated this is not an access road but there will be trucks going in that road.

Lori Weinbrock, 45 Highland Road, discussed fact that we should state that access shall be permitted from an adjoining quarry property so.

Discussion followed. Mayor stated that expansion does not occur unless they get access from one point; it is on the record this evening any type of dispute that they cannot have access until approval from the contiguous operation.

Evelyn Rafferty, 101 Knolls Road, spoke about fact that Mayor said when Avalon Bay was developed the Meer tract would then never be developed. The Mayor said that is not true, he never said that because there was a court order on the Meer Property.

Ms. Rafferty spoke of fact that the town will suffer if the affordable housing is developed; property values will be lowered; Bloomingdale schools core curriculum, ratings will drop; crime will ensure; iron oxide pollution. Spoke in regard to the economic status of the people who will move into these homes; education will go down.

Leonore Johnson, 83 Morse Lakes Road, stated that her concerns are not with the ability of people or children, it is the environment.

Helena Guide, 12 Tice Street, spoke to the Mayor and Council as to accountability; noted that at last meeting of the residents asked if anything that the experts who spoke at the last meeting made any difference to the, and there was utter silence. Where are the people who support this tonight; what are their credentials. Why are we going forward in the face of all the environmental impacts? Stated that you are public servants and ae here to do what the public wants; not to satisfy your own agendas.

Jen Altfield, 17 Cedar Street, stated that she is here to support the Tilcon overlay and building of affordable housing. Ms. Altfield spoke in regard to a threat of another lawsuit if this is adopted.

Tilcon has been a good neighbor and we should do what is best for the entire municipality now and in the future.

Since there was no one else who wished to speak under the Public Hearing, Councilman Costa moved to close the Public Hearing; seconded by Councilman D’Amato and carried on voice vote.

Councilman Yazdi moved to adopt the ordinance with the following amendment:

**Section I. No (3) shall read:**

**The access to the property shall be permitted from an adjoining quarry property site so long as the contiguous owner consents to such access and which is approved by the Planning Board in the form of a Site Plan Approval. There shall be no other ingress or egress access to the property except for emergency uses.**

Councilman Dellaripa seconded the motion.

Councilman Dellaripa stated that this has been very difficult and noted he tends to agree that it is not what should be done environmentally but it is obligation to do what is best for the borough; may not make him happy either way.

Councilman Yazdi stated that when life hands you lemons, make lemonade. Noted that in another municipality they turned down a cell tower due to the opposition of residents; the state came in and approved it anyway. He will vote YES on the ordinance.

Councilman Costa stated there is a court mandate on this site to build; he objects to some of the comments from some residents that we are idiots; we did review it thoroughly. With the court mandate, he does not feel they would find us voting it down favorable.

Mayor Dunleavy stated this we have a Borough form of government and he does support the ordinance and spoke of the court order whereby a developer could do more than 360 units. We were able to reduce 489 units and doing what we can to enable the 360 units per court order. We will reach out to Green Acres to look to utilizing some of the Bi-Coastal property to save as much as 140 acres. We have for the first time since 2004 substantive certification; our goal is to minimize the expansion.

Mayor spoke in regard to the quarry licensing fee in place now of $15,000. As a result of this ordinance, we are looking this evening to introduce a new fee of $400,000.

Nothing will become effective until the Mt. Laurel aspect exists.

Councilwoman Hudson stated that she remembers asking a former Council what is their plan; when she was campaigning she heard complaints about taxes. She has done her research and some won’t like her decision and we will agree to disagree.

Councilman D’Amato stated that the people who are in favor of the project are not here because he feels that they have faith we will do the right thing as they are happy with the direction we are going in. He noted that Tilcon has always been a good neighbor and do a lot of things for the community and always have. We already have an existing quarry.

Councilman Sondermeyer stated that although I think the ordinance is written very strongly and applaud the efforts of the Planning Board, not having a referendum to voice the sentiments of the voters, he believes he will speak for the majority when he votes no.

The ordinance carried as per the following roll call: Council Members: Costa, YES; D’Amato, YES; Dellaripa, YES; Hudson, YES; Sondermeyer, NO and Yazdi, YES.

**Introduction of Ordinance No. 21-2016: Amending the MQ-1 zone**

AN ORDINANCE OF THE BOROUGH OF BLOOMINGDALE, COUNTY OF PASSAIC, STATE OF NEW JERSEY, TO AMEND SECTION 92-25 OF THE BOROUGH CODE ENTITLED “EXCAVATIONS AND EXTRACTIVE INDUSTRIES” was introduced by title by Councilman Costa who moved that second and final reading and public hearing be held on September 20, 2016 at 7 p.m. Councilman Yazdi seconded the motion and it carried on voice vote with all members voting YES.

**Introduction of Ordinance no. 22-2016: Quarry License Fee**

***AN ORDINANCE T O AMEND CHAPTER 4 ENTITLED “GENERAL LICENSING” AND CREATING SECTION 4-17.1 ENTITLED “QUARRYING LICENSE”*** was introduced by title by Councilman Yazdi who moved that second and final reading and public hearing be held on September 20, 2016 at 7 p.m. Councilman Dellaripa seconded the motion and it carried on voice vote with all members voting YES.

**LATE PUBLIC COMMENT**

Councilman Sondermeyer moved that the meeting be open to Late Public Comment; seconded by Councilman Dellaripa and carried on voice vote.

Linda Shortman, 2 W. Shore Road, read into the record a note from the Bloomingdale Senior Citizens thanking the Police Department for everything they do for them and the community.

Jack Miller, Reeve Avenue, noted that as Chairman of the Flood Committee, he will be watching everything in regard to this Overlay ordinance as to flooding.

Since there was no one else who wished to speak, Councilwoman Hudson moved that it be closed; seconded by Councilman Costa and carried on voice vote.

**ADJOURNMENT**

Since there was no further business under this Special Call, Councilman D’Amato moved that the meeting be adjourned; seconded by Councilman Yazdi and carried on voice vote.

Jane McCarthy, RMC

Municipal Clerk