

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

January 23 2014

Regular Meeting

Chairman Geoffrey Syme opened the January 23, 2014 Regular Meeting of the West Milford Planning Board at **7:34 p.m.** with a reading of the Legal Notice, followed by the Pledge of Allegiance and Roll Call.

Administration of Oath: Michael Siesta – Citizen IV, Alternate #1.

ROLL CALL

Present: Linda Connolly, Christopher Garcia, Andrew Gargano, Robert Nolan, Douglas Ott Glenn Wenzel, Alternates Steven Castronova and Michael Siesta, Chairman Geoffrey Syme, Board Attorney Thomas Germinario, Board Planner Charles McGroarty.

Absent: Mayor Bettina Bieri, Councilman Luciano Signorino, Board Engineer Paul Ferreiro.

Chairman Geoffrey Syme advised that Board Engineer Paul Ferriero was excused from attending this meeting, and requested Michael Siesta and Steven Castronova to sit in for the absent Board members. He advised that a quorum was present for this meeting.

PUBLIC PORTION

Chairman Syme opened the Public Portion of the meeting. The following addressed the Board:

Richard Randazzo, 278 Wooley Road, addressed the Planning Board as a resident and as spokesperson for “Water For Our Future,” an informal organization of residents. He requested from the Board a letter to TRC – Daniel Nachman, hydrogeologist, acknowledging that the West Milford Planning Board contracted with Mr. Nachman of TRC in the past for hydrogeological services regarding the Braemar at West Milford (Greene Valley Estates) subdivision, and to state that the Planning Board has no problem with the residents of the Wooley Road area hiring TRC to monitor the aquifer testing procedures to be undertaken by Maser Consulting for Braemar at West Milford. Mr. Randazzo then reviewed the comments received from the Board’s current hydrogeologist, Matthew Mulhall of M2 Associates Inc., dated January 6, 2014, regarding questions that Mr. Randazzo submitted relating to the aquifer testing. Mr. Randazzo noted that the neighboring property owners, who are having their wells monitored, are requesting that the figure for the peak amount of gallons produced by two wells be used rather than the figures for one well as permitted by the ordinance. He further noted that the Maser Test Plan indicated that the Planning Board and their hydrogeologist had input on which wells were to be monitored.

Referring to the revised figures from Maser Consulting, Mr. Randazzo reiterated his request for the previous amount of gallons per day to be restored (9100 gpd) and the previous numbers to be used based on the census figures, and took exception to the lesser amount of gallons per single-family house since, he maintained, the number of houses and sizes did not change. He referred to the aquifer testing ordinance Section E of 4.3.1 that provides a detailed evaluation for an average day with an anticipated population, and stated that every professional has indicated that the population will grow, especially in West Milford, and he demanded that the original 9100 gpd be used in the data for the aquifer testing. Mr. Germinario inquired whether Mr. Randazzo had made an inquiry about this at a prior time, and Mr. Randazzo referred to Sec. 17-4.3.1, E, Water Quality Evaluation, #1, Evaluation of Water Supply. Mr. Germinario responded that it appeared to refer to development population, not necessarily the population in West Milford. He further advised that the Planning Board cannot micro manage the consultant in the review of the well tests, and the aquifer ordinance had already been amended, adding that Mr. Mulhall of M2 is the expert in this matter and will provide his opinions. Mr. Randazzo referred to “topping off pool” and lawn watering, and gave examples of his estimation of water usage for lawn watering and pool use, stressing that the average daily gallonage should be adjusted when considered with the aquifer testing data. Mr. Germinario advised Mr. Randazzo that the Board’s hydrogeologist, Matt Mulhall, had already addressed the points he was raising, and when all the results are in, the Board will receive the report for consideration. He then advised Mr. Randazzo that this application did not have a hearing scheduled at this meeting and that it was improper to hear any evidence or testimony without the applicant present. He suggested that Mr. Randazzo consult with his professionals and bring the results to the Board when this matter is scheduled for a hearing on the conditions of final subdivision approval. Mr. Randazzo then inquired why the notification letter was sent out to the neighboring property owners before the report from the hydrogeologist was received. He repeated his request for a copy of the well data that was compiled when the aquifer testing and monitoring occurred previously (in the summer of 2012). Mr. Randazzo then requested that M2 Associates be present during the aquifer testing and to monitor the off site wells, and to also determine if the information from 2012 will be useful in the final evaluation. Mr. Germinario queried the location in the aquifer-testing ordinance that stated that the Board’s hydrogeologist had to be present when the well testing was in progress, and Mr. Randazzo expressed his opinion that Mr. Mulhall was responsible for monitoring the test wells, adding that the Planning Board represented the people in the community and he did not feel that this was an unreasonable request. Mr. Germinario advised that the Planning Board is limited in authority and that the Board’s powers and authority are not within this scope. He added that the authority in this matter rests with

the discretion of the expert, and there was nothing in the ordinance that required the Board to micromanage the number of hours, nor who should be present during the aquifer testing and monitoring, affirming that the Board had to rely on the experts in this matter.

Chairman Syme advised Mr. Randazzo that if the neighboring property owners hire their own hydrogeologist, they could have him monitor their wells. Mr. Randazzo insisted that the Board should have Mr. Mulhall present to monitor the testing. He again raised the issue of the monitoring data from the incomplete 2012 aquifer testing, and referred to the Applicant informing the Board at a meeting that the data was not valid or useful. He then contended that the Applicant had taken the well data illegally from the 3 neighboring properties. Mr. Randazzo then reiterated his request for a letter from the Planning Board to Daniel Nachman of TRC advising that the Board had no objection to Mr. Randazzo and several neighboring property owners hiring Mr. Nachman for hydrogeological services. Mr. Germinario responded that the matter would be discussed with the Board in Closed Session. When Mr. Randazzo stated that it was his intent to protect the water as part of the group "Water for Our Future," Mr. Germinario inquired whether this group was incorporated. Mr. Randazzo responded that it was an informal group that was formed after they were given an opportunity for a grant. Mr. Germinario advised Mr. Randazzo that if the Board approves the letter to be sent to TRC, there will be no mention of the informal group that was recently formed.

With no one else wishing to address the Board, the Public Portion was **closed** on a **motion** by Robert Nolan and a **second** by Christopher Garcia.

PRESENTATIONS - None.

NEW APPLICATIONS

JOHN AIELLO

Major Soil Removal/Fill Permit #PB-02-13-01 (*Carried to February 6, 2014*)

Block 4402; Lot 1

828 East Shore Road; R-4 Zone

Seeking: Major Soil Removal/Fill Permit for the purpose of re-creating wetlands that previously existed on the site and to comply with a NJDEP settlement agreement.

Chairman Geoffrey Syme advised that the Applicant has been in contact with the Board, and this matter would be **carried** to the February 27, 2014 Planning Board Regular Meeting with no further notice required.

MEMORIALIZATIONS – None.

NEW BUSINESS -

Escrow Fee Increase Discussion – The Planning Board discussed increasing fees for development applications in response to two applicants (Card and Riding) who failed to submit sufficient escrow in 2013 for payment of invoices from the Board professionals, and have since had their applications completed or withdrawn. Mr. Germinario advised that if this were a continual occurrence, the Board could consider raising the fees. Board Planner Chuck McGroarty advised that the fees were just raised in 2009 and 2010, and there are occasional cases that are rather unusual, and the Board may encounter an escrow issue from time to time. One Board member commented that the Board should consider charging interest so that the payments would be timelier, but Mr. McGroarty advised against this and noted that he could look at the ordinances to determine what options the Board would have. He also pointed out that the ordinance sets the escrow at a certain fee, but if an application gets complicated, more money is used than anticipated. Board Member Robert Nolan commented that the escrow accounts needed to be managed better. The Board concurred that Mr. McGroarty should review the development fee ordinances and provide a report to the Board.

ORDINANCES FOR INTRODUCTION – None.

ORDINANCES REFERRED FROM COUNCIL - None.

BOARD PLANNER'S REPORT - Board Planner Chuck McGroarty advised that the Master Plan Committee met prior to this meeting and they were in the process of preparing the new land use element of the Township's master plan, adding that he may have a draft ready for the Planning Board at the meeting in February. Regarding the Highlands compliance, he noted that everything has been done by the Township and is in place at this time. With respect to COAH, Mr. McGroarty advised that there was nothing new at this time to report, noting that the plan was completed and submitted, but the COAH rules may have to be revised. He will continue to keep the board apprised.

BOARD ATTORNEY'S REPORT – Mr. Germinario advised that there would be a Closed Session on the Braemar matter at the end of the meeting.

BOARD ENGINEER'S REPORT – None.

MISCELLANEOUS

Approval Of Invoices – Board Professionals

The invoices submitted by the Planning Board professionals for services performed during the months of December 2013 were **unanimously approved** on a **motion** by Robert Nolan and a **second** by Andrew Gargano.

On another matter, Board member Michael Siesta commented about the NJ Planner publication that was distributed to the Board members prior to this meeting and inquired about the new FCC Cell Tower regulations. Mr. Germinario advised that a brief review of the proposed legislation indicated that the new regulations would permit new antennas to be located on existing structures, houses, water towers, etc. with minimal local approval. The NJ Planner publication was requesting the Planning Board to encourage their municipalities to file comments opposing the regulations. Mr. Germinario noted that if the Planning Board was concerned, the Council could look into this. Chuck McGroarty suggested that the Board request the Governing Body to send something for the comment period. Following the Board's discussion, the Secretary was directed to send a memo to the Township Council with the Planner article entitled "FCC Regulations Could Threaten Local Land Use Control" attached, making them aware of the legislation.

MINUTES

Motion was made to **approve** the minutes from the October 24, 2013 Regular Meeting of the West Milford Planning Board by Glenn Wenzel with a **second** by Christopher Garcia. The minutes were **unanimously approved** by those who were present at the meeting.

CORRESPONDENCE RECEIVED - The Board reviewed the following correspondence:

Highlands Water Protection And Planning Act

1. Notice from Conklin Associates, dated December 17, 2013, advising of a Highlands Applicability Determination application being submitted by the Awosting Association for 99 Long Pond Road, Block 4106; Lot 1 regarding the subdivision of the referenced property for residential development.

NJ Department of Environmental Protection Correspondence

1. Notice received December 26, 2013 from PK Environmental advising of an application to the NJDEP for a Freshwater Wetlands Transition Area Waiver Averaging Plan and a General Permit #2 for Donald and Kathleen Davies regarding the construction of a proposed single-family residence on a 6.84 acre property at Block 5003; Lot 9, 70 Rockburn Pass.

2. No Further Action Covenant Not To Sue letter received from the NJDEP, received December 16, 2013, regarding the removal of a 550 gallon #2 heating oil UGST for 211 Point Breeze Drive, Block 2601; Lot 38.

3. Notice from the NJDEP, dated December 16, 2014, regarding the City of Newark, advising that a review of the 2012 Inspection Reports from Civil Dynamics, Inc. found the Cedar Pond Dam (NJDEP File #22-240) and Hanks Pond Dam (NJDEP File # 22-242) in Unsatisfactory Condition, with improvements and repairs necessary. The notice further orders the City of Newark to provide an action plan to make the dams safe within 10 days of receipt of the letter, and to take immediate action to ensure that the dams remain safe until permanent repairs or modifications are made.

4. Notice from the NJDEP, dated December 16, 2014, regarding the City of Newark, advising that a review of the 2012 Inspection Reports from Civil Dynamics, Inc. found the Cotters Brook Diversion Dam (NJDEP File #22-39) in Poor Condition with maintenance, repairs and studies necessary, and Macopin Reservoir Dam (NJDEP File # 22-69) in Satisfactory Condition with maintenance and studies necessary, with the inspection dates and studies due in 2015 and 2017.

5. Notice from the NJDEP, dated January 9, 2014, to the Township of West Milford regarding Nosenzo Pond Dam (NJDEP #22-241), advising that the 2013 inspection report from Civil Dynamics, Inc. found the dam to be in Satisfactory condition, with maintenance and repairs necessary, and also advising that maintenance must be completed, and associated documents submitted by December 1, 2014, with an updated EAP by March 31, 2014.

6. Request from the Township of West Milford to the NJDEP, dated January 9, 2014, for a No-Cost Time Extension on SFY07 Non Point Source Pollution Grant to Initiate Stormwater Implementation Projects To Reduce Phosphorous Load Entering Greenwood Lake.

7. Treatment Works Approval Application, dated January 6, 2014, received for Lobosco Single Family home, Vine Ave. and Ridge Road, Block 5603; Lots 2.01 and 2.02 for the installation of a subsurface septic disposal system.

8. Notice from Houser Engineering, dated January 9, 2014, advising of an application for a Treatment Works Approval and On-Site Sewage disposal System Alteration for Storms Island, Block 4404; Lots 4.02, 10, 14, 15, 16.

9. Response Action Outcome notice, dated January 6, 2014, received from Kleinfelder advising that the remediation of the area of concern has been completed at 4 Marshall Hill Road, Block 5701; Lot 3, formerly Exxon Facility #35139.

Correspondence

1. Copy of correspondence from the West Milford Health Dept., dated December 13, 2013, to Helping People Help Themselves, advising of a Warning Notice for Non-Approved Camping at Destiny's Gate, 441-445 Morsetown Road, Block 5301; Lots 39, 40.
2. Notification from the Passaic County Planning Board, dated December 10, 2013, advising that they are continuing to withhold final approval for the Twins Realty Group Site Plan, Block 3906; Lots 9 & 10 and Block 6002; Lot 39.01, 937 Burnt Meadow Road, pending receipt of the Permit by Rule Applicability Determination from the NJDEP.
3. Correspondence from the NY/NJ Trail Conference advising of the 11th edition of the North Jersey Trails map set for \$9.95.

CLOSED SESSION

Prior to beginning the Closed Session, Board members Andrew Gargano and Linda Connolly recused themselves from this matter and left the meeting. Board Planner, Chuck McGroarty, also left the meeting. The following resolution was presented by Board Attorney Thomas Germinario.

RESOLUTION NO. 2014-06 - CLOSED SESSION

- Braemar at West Milford, LLC v. Township of West Milford Planning Board and the Township of West Milford, Docket #PAS-L-5709-11.

ROLL CALL

Present: Steven Castronova, Christopher Garcia, Robert Nolan, Douglas Ott, Michael Siesta, Glenn Wenzel, Chairman Geoffrey Syme, Board Attorney Thomas Germinario.

Following Closed Session, Chairman Geoffrey Syme re-opened the Regular Meeting of the West Milford Planning Board. Mr. Germinario advised that the Board could entertain a motion based on the Board's review of a draft letter, dated January 23, 2014, to Daniel Nachman of TRC Environmental, regarding the request from Richard Randazzo for a letter stating that the Board does not object to Mr. Randazzo hiring Mr. Nachman for a review of the aquifer testing at the Braemar subdivision site. This letter will state that the Planning Board will not, and cannot, grant any more weight to what the consultant may present beyond that of the other consultants, regardless of the prior contract with the Board as early as 2007, and that there will be no preference given to this consultant, and that the Board will not be involved in providing access to the well testing sites on Braemar at West Milford property. Finally, Mr. Germinario continued, the letter will state that while the Board finds no conflict now, the Board reserves the right to observe future conflicts if they arise.

Motion was made by Robert Nolan with a **second** by Christopher Garcia to **approve** the letter to Daniel Nachman of TRC Environmental that was requested by Richard Randazzo, 278 Wooley Road, and as drafted and proposed by Board Attorney Thomas Germinario.

ROLL CALL

Yes - Steven Castronova, Christopher Garcia, Robert Nolan, Douglas Ott, Michael Siesta, Glenn Wenzel, Chairman Geoffrey Syme.

No - None.

Motion Carried.

Mr. Germinario further advised that the Planning Board was concerned that members of the public are commenting on pending matters, and they have been unable to curtail information that should be held to public hearings on particular matters, so the Board has considered modifying their policy on public comments to preclude any comments on a matter that is being heard at a particular meeting as well as any matter that is pending.

Motion was made by Robert Nolan with a **second** by Christopher Garcia to **approve** the recommendation of amending the Board's policy with regard to public comments during the Public Portion of the meeting as proposed by Board Attorney Thomas Germinario.

ROLL CALL

Yes - Steven Castronova, Christopher Garcia, Robert Nolan, Douglas Ott, Michael Siesta, Glenn Wenzel, Chairman Geoffrey Syme.

No - None.

Motion Carried.

Mr. Germinario then advised that the Board was concerned about various members of the public repeatedly requesting records from certain pending application files, emails, and correspondence, as well as receiving a constant barrage of repetitious questions for the Board's professionals, and therefore, the Board considered requiring the filing of an OPRA request on potential or pending litigation matters, since this appeared to be the proper vehicle for managing these requests. Mr. Germinario advised that the Board must insure that complying with the requests would not result in prejudicing the Board's position in certain matters.

Motion was made by Robert Nolan with a **second** by Glenn Wenzel to **approve** the requirement of filing an OPRA request for any information regarding a matter that is pending or a potential litigation matter, as recommended by Board Attorney Thomas Germinario.

ROLL CALL

Yes - Steven Castronova, Christopher Garcia, Robert Nolan, Douglas Ott, Michael Siesta, Glenn Wenzel, Chairman Geoffrey Syme.

No - None.

Motion Carried.

ADJOURNMENT

Prior to adjourning, Chairman Syme advised that the Planning Board meeting scheduled for February 6, 2014 would be **cancelled** unless an issue arises that requires immediate attention. Board members will be advised. With no further business to come before the Planning Board, Chairman Syme **adjourned** the Regular Meeting of January 23, 2014 at **9:35 p.m.** on a **motion** made by Robert Nolan with a **second** by Christopher Garcia.

Approved: April 3, 2014

Respectfully submitted by,

Tonya E. Cubby, Secretary