

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

January 26, 2012

Regular Meeting

The Regular Meeting of the Planning Board was opened at **7:35 p.m.** by Acting Chairman Christopher Garcia with a reading of the Legal Notice, followed by the Pledge of Allegiance.

Prior to the Roll Call, the Oaths of Public Office were administered to Councilman Luciano Signorino, Michael Siesta, and Board Planner, Chuck McGroarty.

ROLL CALL

Present: Mayor Bettina Bieri, Linda Connolly, Andrew Gargano, Robert Nolan, Douglas Ott, Councilman Luciano Signorino, *Vacancy*, Alternates Michael Siesta and Steven Castronova, Acting Chairman Christopher Garcia, Board Planner Charles McGroarty, P.P.

Absent: Chairman Geoffrey Syme, Board Attorney Thomas Germinario, Esq., Board Engineer Paul Ferriero, P.E.

Alternates Michael Siesta and Steven Castronova were requested to sit on the Board in the vacant seats.

Acting Chairman Christopher Garcia announced that the following matters listed on the agenda would be carried until the next regular meeting on February 23, 2012: Triple T Construction Site Plan Hearing, the Inserra/West Milford Site Plan Extension of Time, and the Closed Session.

PUBLIC PORTION

Acting Chairman Christopher Garcia opened the Public Portion of the meeting and the following addressed the Board:

Richard Randazzo, Wooley Road – Mr. Randazzo approached the Board regarding the status of the Township's well ordinance and the amendments that he had proposed for Ordinance #2007-028. He had read the response from M2 Associates and was surprised that his suggestions were not being recommended for implementation by the Township's hydrogeologist. With regard to the additional escrow suggested as a requirement, he referenced one of the Board member's comments about the lack of escrow funds for services that are provided by the professionals, hence the suggested requirement of additional escrow for aquifer testing. He noted that the monitoring program brought up some questions that were based on his personal experience with the well monitoring process. Mr. Randazzo also disagreed with Mr. Mulhall's response that the aquifer testing was the applicant's responsibility, and suggested that the Township should choose the hydrogeologist. He felt that all his proposals were valid, and were presented as a means to protect other well owners involved in future aquifer testing. With regard to the data taken on his well during the monitoring period, he stated that he would bring the matter to the Township Council's attention. He expressed concern that the applicant was using the data for their own purpose, asserting that criminal charges may result against the applicant if they fail to relinquish the data on his well. Mr. Randazzo also maintained that some of Mr. Mulhall's remarks were a "little incorrect" and referenced Mr. Mulhall's comment that he had been in contact with the applicant's hydrogeologist, Maser Consulting, during a period when Maser's hydrogeologist was reportedly out of town. In closing, he stated that he merely wanted the use of his water without being concerned that there was sufficient water for him to carry on daily activities.

With no one else present wishing to address the Planning Board on any matter of concern, the Public Portion was **closed** on a **motion** by Steven Castronova and a **second** by Robert Nolan.

PRESENTATIONS – None.

APPLICATIONS – None.

PENDING APPLICATIONS – None.

EXTENSIONS OF TIME – None.

MEMORIALIZATIONS

Resolution No. 2012-5

A Resolution of the Township of West Milford Planning Board Authorizing the Award of a Professional Services Contract Without Competitive Bidding for HydroGeologic Services to M2 Associates Inc. In An Amount Not To Exceed \$5,000.

Motion by Robert Nolan with a **second** by Mayor Bettina Bieri to **approve with amendments**, Resolution No. 2012-5 for M2 Associates Inc., including the "Not To Exceed Amount of \$5,000." in the title and the body of the resolution.

Roll Call:

Yes - Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Christopher Garcia, Andrew Gargano, Robert Nolan, Douglas Ott, Michael Siesta, Councilman Lou Signorino.

No – None.

NEW BUSINESS

Amendments to Well Testing Ordinance: Review report from M2 Associates.

Following adoption of the resolution for M2 Associates, the Board held a discussion regarding the well ordinance and the suggested revisions submitted by Richard Randazzo. Linda Connolly stated that time limits should be included regarding the use of monitoring equipment in the wells during the aquifer testing process. She noted that the language in the ordinance should specify time limits when the weather is optimal and testing is occurring, with such conditions to be confirmed by the Township's hydrogeologist. She observed that the recent aquifer testing by Maser for the Braemar subdivision may have encountered unusual weather conditions, but the ordinance should take into account that unusual situations may occur and provide vehicles for addressing these situations. Michael Siesta responded that if time limits are included in the ordinance, he would prefer that an expert provide comment on this. Steven Castronova concurred, adding that M2 Associates Inc was just hired by the Board and their expertise should be sought. Robert Nolan responded to Mr. Randazzo's comments about insufficient escrow being present to pay the Board's professionals, noting that it was not just this application, but also other applications that had professionals performing work on applications with insufficient funds in place. Mayor Bieri noted that in 2008 the Planning Department made changes to insure that funds were in place before an applicant appears before the Board. She reviewed the process that was developed and the Board Secretary concurred, adding that the both she and Board of Adjustment Secretary monitor the invoices and escrow accounts very closely and personally encumber the invoices, which are/were reviewed by the Land Use Administrator prior to being presented to the Board for approval. They are then sent to the Township Administrator for approval, the Finance Office and the Township Council before the payment is processed. Mayor Bieri commented that as long as the procedures are followed, and sufficient escrow is in place, problems should not be encountered.

With regard to the time limits raised by Linda Connolly, Mayor Bieri understood the need for them, but also understood Matt Mulhall's response to the proposed amendments. Andrew Gargano commented that the aquifer testing by Braemar may have been an unusual situation, as Mr. Mulhall noted in his report, but this was the first time that this ordinance was actually tested for a development application. He suggested that the Board Attorney, Tom Germinario, should review the well ordinance to determine if some additional language could be incorporated. Acting Chairman Chris Garcia recommended that it be discussed by the ordinance subcommittee, and Mr. Siesta replied that the Board members may not have the expertise. He added, however, that with regard to notice to the adjacent property owners, he agreed with changing the notice to 10 days. Mayor Bieri noted that there were only three or four concerns, and that we should confer with the Board Attorney on the matter. There was consensus by the Board for the Secretary to contact the Board Attorney regarding a review of the ordinance and Mr. Mulhall's comments, with his opinion to be reviewed at the next Planning Board meeting.

ORDINANCES FOR INTRODUCTION – None.

ORDINANCES REFERRED FROM COUNCIL - None.

BOARD PLANNER'S REPORT

Highlands Plan Conformance Update

Chuck McGroarty advised the Board that the Township had recently received a CD from the Highlands with regard to updated maps and draft plan documents. With the receipt of these documents, he noted, the Township could proceed with the Highlands Plan Conformance process. He reviewed the document that was distributed at this meeting and noted that the Township was not behind schedule even though the document was dated April 2011. He reminded the Board that all work performed by the Banisch professionals regarding the Highlands Plan Conformance is paid through the grant. He reviewed the following steps that are to be addressed:

- **Master Plan Re-Examination Report** – The last Township Master Plan Re-Exam Report was completed in 2010. Mr. McGroarty noted that, technically, the Township does not have to do another re-exam for 10 years from that date, but the Highlands wants the towns to modify the Master Plan Development procedures, and has suggested an abbreviated Master Plan Re-Exam report. Mr. McGroarty suggested that this be scheduled for review at the February meeting. No notice would be required, and upon adoption, a process will be established.
- **Master Plan Checklist Ordinance** – Mr. McGroarty noted that a model is provided by the Highlands, and the Board would review the document to confirm that the applicable information is included. He commented that these ordinances will replace the ordinances that are on the books today, a requirement of the Highlands Act, and this document can also be reviewed at the next meeting.
- **Environmental Resource Inventory** - The ERI was included on the CD, and it will be a requirement for all towns with established Environmental Commission's to review the document and maps and make recommendations. Mr. McGroarty advised that a recommendation would be made from the Environmental Commission to the Planning Board, but the Board would not have to formally adopt the ERI. The Board Secretary was requested to provide copies to the Environmental Commission for review and comment.

- Highlands Land Use Element – Mr. McGroarty advised that this document should be reviewed, but there was not much content that could be altered, so editing should not be too involved. He referred to the implementation schedule and the 60 days required for adoption, and advised that he had contacted Highlands regarding this and they were not concerned about the deadline as long as the documents were actively under review by the Board.
- Highlands Ordinance - Mr. McGroarty advised that this document, which is over 130 pages, must be reviewed very carefully before making recommendation to the Township Council for adoption. He reviewed some examples of the ordinance that could not be changed, i.e. septic densities.

Mr. McGroarty continued, advising that the checklists should be in place, and that anyone who wanted to develop will have to comply with the restrictions of the Highlands Master Plan. He noted that there may be additional components, including a habitat plan, etc., and these models are expected to be received from the Highlands. Robert Nolan inquired about recent legislation that threatened to supercede the Highlands, and Mr. McGroarty advised that this legislation would not apply to West Milford, and he confirmed this by conversations with Paul Ferreiro, our Board Engineer, and Tom Border from the Highlands Council. It was Mr. McGroarty's understanding that this legislation extends the time for towns to submit their wastewater management plans to the NJDEP for approval. He noted that under the Highlands Act, a sewer line cannot be expanded, nor a new line created, and a new water source cannot be created in the Preservation Areas. He agreed that there was some language in the bill that could be misconstrued, but he did not feel that it could affect the towns in the preservation areas.

Andrew Gargano stressed that the charges for the professionals who provide Highlands Plan Conformance services will be paid for through the Highlands grant. It was also noted that Highland's related work performed by the Board Secretary or any municipal staff for the Board may be charged to the grant. The Secretary was advised to submit a description of charges to Mr. McGroarty for review and possible charge back. Mr. McGroarty noted that the new CD's should have the amended grant agreement, but do not, and the Secretary was requested to obtain a copy from the Finance/Treasurer's Office for the Planning Board.

COAH Update

Chuck McGroarty provided an update to the Board on Affordable Housing (COAH). He noted that the Township's Housing Element and Fair Share Plan had been completed and submitted, with this compliance intended to protect the Township from threat of litigation. He reported that COAH did not act on our plans, and that all plans are currently on hold, adding that the NJ courts have not heard oral arguments on the 2007 appellate decision regarding the invalidity of the growth share amounts. He noted that the court's decision may take several months, so the Township is currently in a holding pattern. Mr. McGroarty has information that he will be providing to the Township Council regarding the housing trust fund. He noted that we currently have over \$50,639. (the balance in 2008) but the money has to be committed as of July 2012, or there is a risk that it will be lost to the State. Mr. McGroarty observed that the Township has no specific projects for affordable housing yet, but he is working with Piazza and Associates on this matter, adding that the contract with Piazza and Associates is viewed favorably by the State. Mr. McGroarty estimated that the funds could be expended by approximately 20% for administrative costs, 30% for affordability assistance, and the remainder for new construction. He will be receiving new manuals and intends that the Township will have a structure in place by April, stressing that the Township must demonstrate to the State that a plan and funds are in place. The Secretary raised the issue of several Bald Eagle Commons units that have become available recently, and the communications with Piazza's office to determine the current value of the units. Mr. McGroarty noted that the units were supposed to be deed restricted, and Piazza was contracted to determine that the units are sold within the confines of the State law on affordable housing. Acting Chairman Chris Garcia inquired if there will be any ramifications with regard to affordable housing and all the recent housing foreclosures, and Mr. McGroarty advised that it should not affect West Milford, noting that recent legislation proposes to provide more units for affordable housing from the foreclosed properties.

BOARD ATTORNEY'S REPORT – No report was provided.

BOARD ENGINEER'S REPORT – No report was provided.

MISCELLANEOUS

Approval Of Invoices – Board Professionals

The Board reviewed the invoice report for the invoices submitted by the Planning Board professionals for services performed during the months of November and December 2011. Chuck McGroarty noted that an invoice submitted for January and February 2011 referencing a meeting with the Historic Preservation Commission and work on the historic preservation plan may be able to be charged to the Highlands. He asked that the invoice be held until he has time to look into it. The remaining invoices were **unanimously approved** for payment on a **motion** by Andrew Gargano with a **second** by Robert Nolan.

MINUTES

The Minutes from the Regular Meeting of December 1, 2011 were **approved** by all eligible to vote on a **motion** by Robert Nolan and a **second** by Douglas Ott.

The Minutes from the Regular Meeting of December 15, 2011 were **approved** by all eligible to vote on a **motion** by Robert Nolan and a **second** by Douglas Ott.

The following documents were reviewed by the Planning Board and filed:

HIGHLANDS WATER PROTECTION AND PLANNING ACT

1. Notice of Technical Incompleteness, dated December 22, 2011, regarding a Highlands Applicability and Water Quality Management Plan Consistency Determination for Donald & Kathleen Davies, Rockburn Pass, Block 5003; Lot 9 with respect to an exemption for the construction of a single family dwelling, advising that additional information is required. Follow up emails from the NJDEP and the applicant's engineer advised that, due to the recent death of the applicant's prior engineer, a 90-extension for compliance was granted.
2. Notice received from ANJEC on January 11, 2012 regarding a program being offered entitled "Economic Development Opportunities in the Highlands" on Thursday, January 31, 2012 at 7:00 – 9:30 pm at the Morris County Cultural Center, Morristown, NJ. Registration is required.
3. Updated information received on January 19, 2011 from the Highlands Council regarding the Highlands Plan Conformance, including the WM Environmental Resource Inventory and Figures, WM Master Plan Element and Exhibits, and the WM Highlands Area Land Use Ordinance with Exhibits.

NJ DEPARTMENT OF ENVIRONMENTAL PROTECTION

1. Correspondence dated December 29, 2011 from the NJDEP to David Hyland, 1281 Macopin Road, Block 11601; Lot 9, advising that an inspection had been made of the site and restoration was performed per the department's requirements, and also advising that further disturbance would require a permit, with any unregulated activity subject to enforcement action without necessary the approvals.
2. Correspondence dated December 14, 2011 from the NJDEP to Tim Birkoff, 470 Ridge Road, Block 5501; Lot 2.03, 2.04, advising that an inspection had been made of the site and restoration was performed per the department's requirements, and also advising that further disturbance would require a permit, with any unregulated activity subject to enforcement action without necessary the approvals.
3. Copy of correspondence to the NJDEP, dated December 20, 2011, from the Bald Eagle Village Condominium Association, regarding the Pettet Pond Dam (NJ Dam File No. 22-293), advising that they have engaged the services of Morris Engineering of Somerville, NJ to perform the dam inspections and address the recommendations required by the NJDEP.
4. Copy of Memorandum from John Moyle of the NJDEP Bureau of Dam Safety & Flood to John Trontis, NJDEP Division of Parks & Forestry, advising that the No Name Dam No. 40 (NJ Dam File No. 22-181) Dam Safety Compliance Schedule was unacceptable because no deadline was given for an EAP (Emergency Action Plan) update, and the EAP has not been updated since 2003. Updated information must be received by February 15, 2012, with the next regular inspection to be conducted by August 2012, with only regular maintenance of the site permitted without further approval by the Department.
5. Copy of a Response Action Outcome, dated December 8, 2011, superceding the September 1, 2011 RAO, received from Conestoga-Rovers & Associates, regarding the remediation of the gasoline UST system for the Lukoil Station #57360, 1910 Union Valley Road.
6. Copy of Public Notification and Outreach with attachments, dated December 20, 2011, sent to the NJDEP from the Elm Group, regarding the West Milford Shopping Center, LLC, Block 6701; Lot 10, advising that the required signs have been erected at the site and all requirements had been met regarding the site investigation as a result of PCE (tetrachloroethylene), TCE (trichloroethylene, and (PCBs) polychlorinated biphenols discovered at the site.
7. Notice from the NJDEP Bureau of Dam Safety, dated January 10, 2012, advising that, based on the inspection report dated 12/22/11, the Apschawa Main Dam and Auxiliary Dam (NJDEP File No. 22-1, 22-314) are in Satisfactory condition with improvements necessary, and requesting the next inspection report by December 11, 2013. Although the compliance schedule was acceptable, a request was made for an evaluation to be completed of the overtopping by March 31, 2012 to ensure that the overtopping during storm events does not affect the integrity of the dam structure.
8. Response from the NJDEP, dated January 10, 2012, regarding the Henion Pond Dam, NJ File No. 22-18, advising that the request for additional time for submission of the Dam Safety Permit Application could not be approved, and provided two options for the owner, Camp Vacamas Assn, Inc., namely that 1) the extension could be granted until December 31, 2012 if the lake is drained completely and remains drained until the dam is in compliance, or 2) the lake may remain at the current lowered level (2' below normal pool) if a contract has been made with an engineering consultant within 30 days of this letter and a permit application submitted by July 31, 2012.
9. Notice received from Gerald Gardner Assoc, dated January 6, 2012, regarding the submission of an application to the NJDEP for a GP 25 and a Flood Hazard Area Applicability Determination regarding

the repair of an existing septic system for Shamsji Property, 31 Cherry Ridge Road, Block 17201; Lot 21.

10. Notice dated January 15, 2012 received from Synergy Environmental Inc. regarding the Biennial Certification for Kimber Petroleum – Lakeside Amoco – 2 Lakeside Road, Hewitt, regarding remediation of the site, in accordance with NJAC 7:26E-8.6-2.

11. Correspondence dated January 16, 2012 from HCI regarding a request to conduct Vapor Intrusion Testing at 5 Lambert Road, Block 3603; Lot 2, and advising that this is part of an investigation into ground water contamination at the Adelo site, 2019 Greenwood Lake Tpk., which includes elevated levels of Tetrachloroethene (PCE) and Vinyl Chloride (VC) which were detected in the ground water. The testing is expected to be conducted in February 2012.

12. No Further Action Letter, dated January 11, 2012, received from the NJDEP regarding Remedial Action for Unrestricted Use for the Mercury Discharge Areas of Concern, Tennessee Gas Pipeline/Station 02-0339, Greenwood Lake Tpk., Block 332; Lot 37.

13. Notice of an application to the NJDEP, dated January 11, 2012 regarding a GP 25 received from Houser Engineering, LLC for the repair of an existing septic system at 10 Chester Road, Block 2018; Lot 4.

14. Notice of an application to the NJDEP, dated January 10, 2012 regarding a GP 25 received from Houser Engineering, LLC for the repair of an existing septic system at 16 Jenkins Road, Block 1611; Lot 22.

15. Notice dated January 11, 2012 from the NJDEP advising that online “E-Permitting” will be available for property owners and contractors to obtain certain types of freshwater wetlands permits.

16. Notice from the NJDEP, dated January 11, 2012, advising NJ residents to test for radon during January, Radon Action Month, and also advising that several NJ towns and counties, including Passaic County Health Dept., were honored for their efforts to bring attention to the potential dangers of radon.

17. Notice of Deficiency dated January 13, 2012 received from the NJDEP, Bureau of Underground Storage Tanks, acknowledging receipt of the Remediation Plan for Singh Brothers Petroleum, 555 Warwick Tpk., but noting deficiencies with regard to the delineation of contaminants previously detected in soil borings SB-9 & SB-10, as well as delineation of the septic area contamination, completion of overburden groundwater delineation, completion of additional bedrock delineation wells, failure to adequately characterize the impacted bedrock aquifer, and failure to perform a Preliminary Assessment and Site Investigation (PASI) for a contaminant (tetrachloroethene) not related to the material stored in the UST. Corrective Action includes completion and submission of required items by May 1, 2012, and formulation of a Remedial Action Workplan to be submitted May 1, 2012.

CORRESPONDENCE

1. Copy of correspondence, dated December 6, 2011, received from William Longhi, President and CEO of Orange & Rockland Utilities, addressed to the Mayor and Township Council, recapping O&R’s response during the numerous 2011 storms, and requesting to meet with various municipalities in 2012 to review the planned changes and upgrades to response services.

2. Copy of correspondence dated December 16, 2011 from the Passaic County Planning Department regarding the Q & S Deli, 1952 Union Valley Road, Block 3601; Lots 1 and 3, advising that a corrected Deed with Description, Title Policy, New Jersey Form GIT3 and an Affidavit of Consideration indicating that no transfer tax is due must be submitted to Passaic County for review and filing, and upon receipt of these documents, the project will be considered for unconditional approval.

3. Notice from the NJ State Department Office of Planning Advocacy regarding six presentations and public hearings for the Draft Final State Strategic State Plan: New Jersey’s State Development and Redevelopment Plan and the Draft Infrastructure Needs Assessment – including February 27, 2012 beginning at 6:00 p.m., Frelinghuysen Arboretum, Haggerty Center, 353 East Hanover Avenue, Morris Township, NJ 07962.

4. Copy of Historic Preservation Commission December 2011 agenda and November 15, 2011 minutes indicating that the Historic Preservation Commission is sending an application for the Wallisch Estate to be considered as one of New Jersey’s 10 most endangered historic places.

ADJOURNMENT

With no further business to come before the Planning Board, the Regular Meeting of January 26, 2012 was **adjourned at 9:00 p.m.** by Acting Chairman Chris Garcia on a **motion** by Robert Nolan and a **second** by Steven Castronova. Prior to

Approved: February 23, 2012

Respectfully submitted by,

Tonya E. Cubby, Secretary