

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

February 23, 2012

Regular Meeting

The Regular Meeting of the Planning Board was opened at **7:30 p.m.** by Chairman Geoffrey Syme with a reading of the Legal Notice, followed by the Pledge of Allegiance.

Prior to the Roll Call, the Oath of Public Office was administered to Board Attorney Thomas Germinario.

ROLL CALL

Present: Mayor Bettina Bieri, Linda Connolly, Christopher Garcia, Robert Nolan, Douglas Ott, Councilman Luciano Signorino, *Vacancy*, Alternate Steven Castronova, Chairman Geoffrey Syme, Board Attorney Thomas Germinario.

Absent: Andrew Gargano, Michael Siesta, Board Planner Charles McGroarty, P.P., Board Engineer Paul Ferriero, P.E.

Alternate Steven Castronova was requested to sit on the Board for absent member Andrew Gargano.

PUBLIC PORTION

Chairman Geoffrey Syme 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. Mr. Germinario stated that he had provided a letter to the Board advising that, with Board approval, he would review the ordinance with Township Attorney Fred Semrau regarding draft amendments. Mr. Randazzo expressed concern about the access agreement that he signed for the monitoring period, which stipulated that the well would only be open for a 72-hour period, including 24 hours prior to the test, to prevent bacteria from affecting the well. He asserted that the actual process did not comply with the access agreement. He then requested that the data taken from his well by the applicant's hydrogeologist be provided to him, and stated that he had addressed the Township Council on this matter and they advised that the Planning Board was responsible for matters relating to monitoring and the well ordinance. Mr. Germinario advised Mr. Randazzo that the Planning Board was responsible for an active application, but since there was no active application at this time, the Board had no authority to tell the applicant or Maser Consultants (Braemar's hydrogeologist) anything at this time, adding that the Board is not an enforcement agency. Mr. Randazzo replied that the Township Attorney stated, at a recent Township Council meeting, that the Planning Board was the enforcement body. Mr. Germinario responded that, with an application, the Board is the enforcer as far as the provisions of the ordinance to ensure that they are complied with so that the applicant may seek approval for an application. He stressed, though, that the Board does not have the same enforcement powers as the Zoning Officer or the Construction Official. Mr. Randazzo replied that there was an application during the proposed testing period, and Mr. Germinario advised him that the Board could not turn the clock back and demand that Braemar submit information on the well data. As for the incomplete well testing, he observed that this was one of the reasons that the applicant was not declared complete and could not proceed with their final subdivision application. Mr. Germinario further advised that this Board could only abide by land use law and determine if there is a complete application to approve or deny. He advised Mr. Randazzo that similar matters with regard to enforcement powers have been raised in other towns, but the Planning Board has very limited powers under the land use law, and Mr. Randazzo replied that he did not necessarily agree with Mr. Germinario's statements. Mr. Germinario responded that he did not entirely disagree with Mr. Randazzo, and thought that it would be in the best interest of all if he received the data also, but Mr. Germinario could not make this a reality. He added that if the Board had the authority to help him get the information, they would. Mr. Randazzo noted that the applicant chose their hydrogeologist (Maser) and Maser chose the wells to be tested, but he maintained that the Township's hydrogeologist (Matt Mulhall of M2) should choose the residential wells to be monitored, and he requested that a change be made in the well ordinance to specify that the Township's hydrogeologist should make a determination on the wells that should be monitored. He further stated that Maser had chosen the "cream of the crop" and that it would be more beneficial to the residents if the Township's own hydrogeologist selected the wells. Mr. Germinario advised that M2 has to approve the wells chosen, and in this matter he had, adding that they are aware that the applicant's professional will choose the best locations; this is all taken into account in the analysis. With regard to the 2005 hydrogeological report prepared by Maser for this site, Mr. Germinario advised that there were no final conclusions reached from this 2005 report, although the Township's independent consultant had determined there was a potential drawdown of the aquifer with slow recovery of the wells.

Doris Aaronson, 19 Bearfort Road, addressed the Board, stating that Board Member Andy Gargano requested that she review the Re-Examination Report and provide her comments to the Board. The Board Secretary advised that this matter would be addressed at the March meeting. Ms. Aaronson then inquired whether the Board members had read the Draft State Strategic Plan, and noted that she had spent several hours on the telephone with representatives from ANJEC and the Highlands Coalition. She urged the Board members to review the document on the State website, and referred to purple blotches that have re-appeared, representing center designations, and her sources informed

her that any center designations that had previously been considered years ago were included in this Draft State Strategic Plan. She also advised that Julia Somers of the environmental advocate group, Highlands Coalition, warned that the purple blotches are targeted for high-density development and something must be done to stop the inclusion of these priority growth areas in the plan. Ms. Aaronson suggested that the Planning Board and Township Council submit written comments to the NJDEP stating that the Township is overdeveloped by 30% and cannot sustain any more development. She also distributed an article from the Sierra Club which warned that the State Strategic Plan threatened the Highlands region, would block green acre funds, and weakened the Highlands protection by allowing sewer hook ups and systems that will not be in compliance. Ms. Aaronson requested that the Board hold a special meeting with the Township Planner after he attends an informational meeting regarding the Draft State Strategic Plan, adding that the plan proposes high density development in areas that have transit stations (Newfoundland and Hewitt). Mr. Germinario commented that the Board would have to consult with Mr. McGroarty, the Township and Board Planner, as there may be an impact on the Master Plan and the Re-Exam Report, but he noted that the Board should not take a position on the Draft State Plan at this time.

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 with a **second** by Douglas Ott.

PRESENTATIONS – None.

APPLICATIONS

Extensions of Time

INSERRA/WEST MILFORD, LLC (SHOPRITE)

Preliminary & Final Site Plan #0720-0308AB

Bulk Variance #0730-0793

Block 6303; Lots 15 & 16

Marshall Hill Road; CC Zone

Seeking: Second One-Year Extension of Time for Site Plan Approval per N.J.S.A. 40:55D-52(a).

John Wyciskala, Esq., attorney for the applicant Inserra/West Milford, was present to address the Board, advising that it had been a year since he last appeared before the Board requesting a one-year time extension of site plan approval for his client regarding the Shop Rite Shopping Center. He noted that the reason for this request was almost identical as the prior year's request, and he proceeded to provide an overview of the project for the Board, describing the rear expansion and re-facing of the front façade that had been approved in February 2009. Mr. Wyciskala stated that there had been numerous comments and revisions following the Board's initial site plan approval. He advised the Board that due to a deed restriction with adjacent properties, McDonalds and [Wells Fargo] Bank, Shop Rite was unable to construct an addition on the front of the building, and he surmised that the deed restriction was instituted to protect the properties from over expansion of the shopping center. He noted that one of the property owners agreed to the addition while the other did not, and subsequent to this, Inserra proposed an addition to the rear of the shopping center and came before the Board for approval. Mr. Wyciskala advised that the rear addition presented some difficulties for the owners, necessitating relocation of the water tank closer to the residents, and, more importantly, require closing the store for a period of time. Negotiations continued with McDonalds, and when an agreement was reached, new plans were developed for the Shop Rite. He further noted that a delay was encountered in returning to the Board because of a personnel change at McDonalds. Mr. Wyciskala stated that he believes they are "back on track now," and advised that the applicant, Inserra/West Milford, will be returning to the Board for an amended site plan which will include a proposal for a bump-out addition in the front of the building, with the architecture to have slight modifications. With regard to the streetscape along Marshall Hill Road, he noted there may be changes in the amended site plan application. With respect to the movie theater, he noted that the end user may reconstruct the building since the existing structure may be difficult to work with and require extensive renovation. Mr. Wyciskala advised that the owner is anxious to move forward on this project, just as the Township is anxious for it to be completed. He further advised that late spring is the anticipated submission period for the amended site plan, adding that the engineer has been instructed to move forward with preparing the amended plans. He then requested a second One-Year Time Extension of site plan approval from the Board based on events that have transpired with regard to this application and per N.J.S.A. 40:55D-52(a). Board Attorney Thomas Germinario advised that, under the MLUL, the Board considers zoning changes that may have taken effect with regard to a site plan. Absent any zoning changes, the Board can provide up to three one-year extensions, with one consideration being that the applicant has diligently pursued the resolution of any issues surrounding their site plan, and this has been demonstrated through Mr. Wyciskala's account. Board member Steven Castronova inquired if the parking will be affected by the addition in the front instead of the rear, and Mr. Wyciskala replied that the parking spaces will be re-adjusted and will include more ADA spaces, adding that the applicant has exceeded the number of required spaces for this site. Resident Doris Aaronson commented that the streetscape along Shop Rite's property should include benches along the sidewalks to encourage people to walk to the location. Mr. Wyciskala advised that this could be discussed during the amended site plan hearing. There were no comments from any of the departments regarding the time extension, and Mr. Wyciskala noted that departmental comments received after the amended site plan has been submitted would be addressed. He concluded by noting that the McDonalds intended to renovate their existing building, and would be submitting an application to the Board of Adjustment for a conditional use variance and site plan approval.

Motion by Mayor Bettina Bieri with a **second** by Councilman Luciano Signorino to **approve** a second One-Year Time Extension for Preliminary and Final Site Plan approval for Inserra/West Milford LLC, Application Nos. 0720-0308AB, 0730-0793.

Roll Call:

Yes - Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Christopher Garcia, Robert Nolan, Douglas Ott, Councilman Lou Signorino, Chairman Geoffrey Syme.

No – None.

MEMORIALIZATIONS

Resolution No. 2012-7

Motion by Mayor Bettina Bieri with a **second** by Councilman Luciano Signorino to **approve Resolution No. 2012-7** memorializing a second One Year Time Extension for Preliminary and Final Site Plan approval for Inserra/West Milford LLC, Application Nos. 0720-0308AB, 0730-0793, until February 5, 2013.

Roll Call:

Yes - Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Christopher Garcia, Robert Nolan, Douglas Ott, Councilman Lou Signorino, Chairman Geoffrey Syme.

No – None.

EXTENSIONS OF TIME - PENDING APPLICATION

TRIPLE T CONSTRUCTION, LLC

Preliminary Site Plan #PB-03-11-01

Bulk Variance

Block 6002; Lot 29

280 Marshall Hill Road; LMI Zone

Seeking: Preliminary Site Plan and Variance Approval for rehabilitation of existing building and site to accommodate a warehouse/distribution center/office and construction storage. This application was bifurcated and prior approval was granted by the Planning Board for the boat storage portion of the site plan on October 27, 2011.

Mr. Germinario advised the Planning Board that this matter was not set to return to the Board yet for numerous reasons, including revisions that were required and have not been submitted. He further advised that the applicant has submitted a 60 day extension of time for the Board to render a decision on this application, and the Board can choose to accept the extension or proceed to act on the application. There was consideration that the Board could deny the application without prejudice in light of the fact that there were numerous attempts by the Board Secretary to contact the applicant and his professionals regarding the expiration of time per M.L.U.L. Mr. Germinario stated that he did not feel that the applicant was purposely acting in bad faith, and he recommended that the Board accept the extension of time until April 2, 2012 per correspondence received from the applicant's attorney, Richard Saunders, Esq. The Board unanimously accepted the extension of time and carried this matter until a future meeting.

ORDINANCES FOR INTRODUCTION – None.

ORDINANCES REFERRED FROM COUNCIL - None.

BOARD PLANNER'S REPORT – None.

BOARD ATTORNEY'S REPORT – Mr. Germinario reported that the Braemar matter will be discussed in Closed Session.

BOARD ENGINEER'S REPORT – None.

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 month of January 2012. The invoices were **unanimously approved** for payment on a **motion** by Steven Castronova with a **second** by Councilman Luciano Signorino.

MINUTES

The Minutes from the Re-organization and Regular Meetings of January 12, 2012 were **approved** by all eligible to vote on a **motion** by Steven Castronova and a **second** by Robert Nolan.

The Minutes from the Regular Meeting of January 26, 2012 were **approved as amended** by all eligible to vote on a **motion** by Steven Castronova and a **second** by Christopher Garcia. The minutes will be **amended** to read that Acting Chairman Christopher Garcia announced the matters that were carried, not "Andrew Gargano."

CLOSED SESSION

RESOLUTION No. 2012 – 6

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

Motion by Christopher Garcia with a **second** by Steven Castronova to close the public portion of the Planning Board meeting at **8:26 p.m.** and withdraw into Closed Session.

Motion by Christopher Garcia with a **second** by Steven Castronova to reopen the public portion of the Planning Board meeting at **8:52 p.m.**

MISCELLANEOUS

Comments on Well Ordinance – With regard to the proposed amendments of the existing aquifer/well ordinance relating to failure on the part of an applicant to comply with a proposed aquifer testing schedule, Mr. Germinario advised that he and Township Attorney Fred Semrau could draft an amendment that would include an implementation schedule. This, he noted, would not require extensive re-drafting of the original document. Chairman Syme inquired about the data collected from Richard Randazzo's well, and Mr. Germinario advised that the information would become a matter of public record in any report submitted to the Planning Board. He noted that there were legitimate reasons for obtaining the well data in order to investigate hydrogeology for the drawdown, but he also stated that there could be an illegitimate reason, i.e. "cherry picking," and the safeguard that the Board has is the contract with a hydro specialist to review and monitor the process. Mr. Germinario noted that an applicant may test a well to determine the appropriate strike points which may or may not be information that is shared, and Mr. Syme inquired whether the information can be obtained and not shared with a particular property owner. Mr. Germinario further stated that he understood Mr. Randazzo's position with regard to his well being used for monitoring purposes and the data not being made available to him, but he advised that the Board has to rely on the Township's consulting hydrogeologist to determine what they were within their legal rights to do. He continued, noting that if the applicant relies on the data to report that there is sufficient water, then the data will be released with the report. If the data is not used, then the Board is not privy to the information. Mr. Germinario advised that this was not an unusual situation from well ordinances that he has encountered in other municipalities. Board member Robert Nolan commented that Matt Mulhall of M2, the Township's consultant, rebutted most of Mr. Randazzo's comments, and Mr. Nolan suggested that Mr. Germinario's comments get implemented in an amendment to the ordinance. Mayor Bieri stated that she was in favor of the Board Attorney drafting amendments to the [aquifer testing] ordinance. Mr. Germinario advised that he did not want a time limit imposed by the amendments, but would rather see the applicant propose the time limit, with the Townships' hydrogeologist concurring with the schedule. Mr. Germinario also noted that our aquifer-testing ordinance is similar to other towns, but the provision he drafted was unique to West Milford. Usually, he added, the developer wants to complete the aquifer testing, but the economy has not been good and the aquifer testing is an expensive process. Following the discussion, by consensus, the Planning Board directed Mr. Germinario to draft an amendment to the aquifer-testing ordinance, which would include an implementation schedule, with the draft provided to the Board for review prior to recommendation being made to the Township Council.

On other matters, the Board Secretary advised the Board that she had been contacted by a representative of the Awosting Association, informing us that they plan to re-submit revised plans for the proposed Awosting Club House in the next month or two. Mr. Germinario noted that our ordinance does not have provisions for applications that sit incomplete for years and then come back for completeness review. He suggested that time limits should be included in the ordinance that would require an applicant to re-apply after an application sits inactive for a set period of time. He requested that this matter be placed on the agenda for the next Planning Board meeting, and he will speak with Chuck McGroarty in the interim to discuss draft language that can be considered for an amendment, especially in light of recent legislation regarding the time of decision rule.

With regard to the Oak Ridge Road Associates requiring waivers for completeness prior to the commencement of a Board hearing, Mr. Germinario advised that the Board could consider the waivers at the beginning of the hearing for this matter, which will be scheduled for April 5, 2012.

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

HIGHLANDS WATER PROTECTION AND PLANNING ACT

1. Notice received February 15, 2012 from Conklin Associates of an intent to file for a Highlands Exemption for the Awosting Association Inc. for Block 4105; Lot 1, Long Pond Road.
2. Notice received February 6, 2012 from CH2MHILL on additional information being submitted for the Existing Highlands Exemption for the 300 Line Project – Loop 325, specifically a drawing list comparison table, listing all the drawings that were submitted for this application.

NJ DEPARTMENT OF ENVIRONMENTAL PROTECTION

1. Response Action Outcome received from BETTS Environmental Services Corp. with regard to Lakeland Bank, 250 Oak Ridge Road, Oak Ridge, NJ, Block 16502; Lots 3 & 4, issued for unrestricted use of a 2,000 gallon heating oil underground storage tank. The required closure and investigation

activities were conducted in accordance with current regulations and no evidence of a release of petroleum product was identified.

2. Notice of Violation received from the NJDEP dated January 23, 2012 regarding Marek Wenit, 40 Old Hoop Pole Rd., Block 16704; Lot 6, for performance of unauthorized activities within a wetlands transition area, including cutting and clearing of approximately 12,250 square feet of vegetation, trees and shrubs, for the purpose of expanding a lawn area, in addition to the placement of over 70 cubic yards of soil in the cleared area. Restoration proposal plan to restore the site to the pre-disturbance condition required within 30 days to the NJDEP.

3. Copy dated February 8, 2012, received from Wander Ecological Consultants, regarding an application for a NJDEP General Permit #8 and #10A for Ken and Lisa Perry at Block 5001; Lot 4, 93 Morsetown Road, seeking approval for existing carports and driveway that were installed without permits.

4. Copy of a notice, dated February 6, 2012, that an application will be made by T&M Associates for the County of Passaic regarding an NJDEP Flood Hazard Area Individual Permit and Freshwater Wetlands General Permit #1 with reference to the Bridge Structure No. 1600-255, La Rue Road over Clinton Brook.

5. Copy of an NJDEP Remedial Action Work plan/Permit By Rule Approval, dated February 14, 2012, received for George Perrone, 37 Oak Drive, Block 16302; Lot 13, regarding the remediation of contamination from discharges of heating oil as defined at NJAC 7:14A-1.2; the approval of hydrogen peroxide will be through injection points and conducted in conformance with the submitted plan. A Remedial Action Report (RAR) is required by March 1, 2013. Site Monitoring Requirements from the NJDEP, dated February 14, 2012, requiring that baseline ground water sampling at all on-site monitoring wells be analyzed prior to placement of the Hydrogen Peroxide, and outlining the procedures for the monitoring associated with the NJDES Permit By Rule Discharge Authorization.

CORRESPONDENCE

1. 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.

2. Application for the 2012 Sustainable Land Use Planning Grants for Municipalities, with a maximum award of \$15,000. provided through ANJEC, with 50% matching funds required for projects that may include land use plans, ordinances, and studies that will foster more sustainable use of natural resources.

3. Hudson Essex Passaic Soil Conservation District Certification of Plan for DeBoer Driveway by Chertacojo, 22 Madison Avenue, West Milford, Block 7801; Lot 62, certification valid for 3.5 years until July 26, 2015.

4. Notice received February 9, 2012 from Passaic County regarding the first Farmland Preservation Forum by the Passaic County Agriculture Development Board to be held on Monday, March 19, 2012 at 6:30 p.m. at the Passaic County Planning Office, Totowa, NJ. For further information call 973-569-4045.

5. Notice received on February 3, 2012 from ANJEC regarding the 2012 Sustainable Land Use Planning Grants for Municipalities with matching grants up to \$15,000.00, deadline March 30, 2012.

6. Notice received from the NY/NJ Trails Conference regarding trail maps and guidebooks available for the various regional trails.

ADJOURNMENT

With no further business to come before the Planning Board, a **motion** was made to **adjourn** the Regular Meeting of February 23, 2012 at 9:50 p.m. by Steven Castronova and a **second** by Councilman Lou Signorino. Prior to officially closing the meeting, Chairman Syme noted that the next Planning Board meeting scheduled for March 1, 2012 has been cancelled by Board consensus. He also noted that on March 22, 2012, Board Planner Chuck McGroarty will provide an update on the Highlands Master Plan and the Board will consider the Township's Master Plan Re-Examination Report. Additionally, a matter for discussion will be "time limits for Board applications," and Chairman Syme requested that the Board Secretary place this matter on the next Planning Board agenda. Following these announcements, the Regular Meeting of the West Milford Planning Board was adjourned at **9:56 p.m.**

Approved: August 2, 2012

Respectfully submitted by,

Tonya E. Cubby, Secretary