

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

February 26, 2009

Regular Meeting

The Regular Meeting of the Planning Board was opened at 7:32 pm by Chairman Andrew Gargano with a reading of the Legal Notice followed by the Pledge of Allegiance.

ROLL CALL

Present: Mayor Bettina Bieri, Steven Castronova, Richard McFadden, Douglas Ott, Chris Rosica Clinton Smith, Geoffrey Syme, Councilman Philip Weisbecker, Alternates Michael Siesta and Kerry Goceljak, Chairman Andrew Gargano, Board Attorney Thomas Germinario, Board Planner Charles McGroarty, and Board Engineer Paul Ferriero.

Absent: None.

PUBLIC PORTION

Jim Novack – Larchmont Drive – Mr. Novack raised some issues about ADA compliance with regard to businesses that receive their Certificate of Occupancy. He noted that there were no measures in place to enforce compliance once approvals are given, and also asked the Planning Board to address the matter of timely snow removal that may hinder access for the handicapped.

With no one else present wishing to address the Planning Board, the Public Portion was closed on a **motion** by Chris Rosica and a **second** by Councilman Philip Weisbecker.

Chairman Gargano advised that he was moving the Jack Levkovitz application up on the agenda before the Streetscape Presentation by Dewberry Goodkind.

SITE PLAN APPLICATION REVIEW WAIVERS – None.

APPLICATIONS

CARRIED APPLICATIONS – None.

TIME EXTENSION REQUESTS

JACK LEVKOVITZ (VILLAGE ON RIDGE SECTION II)

Amended Final Subdivision #0510-1744C

Block 5201; Lots 16, 19 & 20; Block 5301; Lot 1; R-3

Ridge Road; R-3 Zone

Seeking time extension for filing deeds and timing of conditions of approval.

The Chairman Gargano recused himself from this application stating that he is a trustee of Skylands Clean and, as such, was privy to correspondence with regard to this matter. Geoffrey Syme assumed the Chair for this application. Alternate Michael Siesta was appointed to sit on the Board for Mr. Syme.

Rob Simon, Esq. of Herold & Haynes was present to address the Board on behalf of the applicant, Jack Levkovitz. Mr. Simon reviewed the sequence of events with regard to this application, noting that the Planning Board granted an Amended Final Major Subdivision Approval for 53 lots in Section II on January 26, 2005. 3 of the 53 lots would be utility lots for the MUA pumping station and certain tanks. Since that time approximately 90% of the work had been completed in terms of site work that included rough grade of roads, manholes, water lines, curbing, sewer lines, catch basins, and 50% of the pavement. Mr. Simon advised that the 2005 Resolution conditions of approval required, prior to filing of the plat and releasing it for filing with the County, 1. the M.U.A. needed to amend their existing water allocation permit to include the three proposed water supply wells in the Authority's name for the proposed community water supply system, and 2. the MU. A. was to receive a permit to construct and operate a public community water supply system in its name for that system. Those conditions were requested by the M.U.A.'s engineer at the time of the approval for the subdivision. On December 6, 2007, Mr. Levkovitz received an extension of time for filing major subdivision plat for Section II for an additional one year pursuant to NJS 40:55d-52d. The applicant was before the Board for an additional extension of time under NJS 40:55d-52a, that provides for an extension by the Planning Board provided that the final plat was duly recorded within the time period pursuant to NJS 40:55d-54. Mr. Simon raised the distinction between the signing of the plat and the recording of plat, and provided his interpretation of Section 54 of the M.L.U.L., noting that the language includes filing the plat in a timely manner, which is solely the responsibility of the applicant, adding that the Board can extend the time if the developer proves that he has been prohibited from completing his obligation of filing the plat. Mr. Germinario did not agree with Mr. Simon's assertions, stating that the language of 52a of the MLUL was clear in requiring the plat to be recorded. He also added that Section 54 did not apply in this situation. In Mr. Germinario's opinion, the time extension could only be applied after the plat is recorded. Mr. Germinario advised the Board that Section 52d was the only provision for extension available and the Board had given that extension the prior year. Mr. Simon opined that his original argument in a letter dated October 17, 2008 was conservative in view, but the argument presented at this meeting was the argument that is correct. The letter of October 17, 2008 requested the signing of the plat and an extension of time for filing the plat, but the permits required had not

been obtained. Mr. Simon asserted that the applicant intends to respond to the DEP requirements and also to challenge the Highlands decision.

Jack Levkovitz, applicant, was sworn in by Mr. Germinario and provided testimony to the Board. He indicated that he intended to challenge the Highlands decision that this project was no longer exempt. He stated that he had spent approximately \$200,000. on the project, installing paving, curbing, retainer walls, stone drain outfalls, and can prove to the Highlands that work had been done at the site. He had delivery tickets for concrete, inspection reports from the Township, and other documents, and stated that if he had been contacted he would have provided them to the DEP. Mr. Simon noted that the applicant contacted the Highlands to clarify what type of work could be done and Mr. Levkovitz had complied. He stated that the DEP had made an inspection of the site and no one was present, due to the fact that he does not have contractors working every day, and would have had someone at the site to review the work that had been completed. Mr. Germinario opined that the DEP has jurisdiction to provide Highland's exemption and that this Board cannot make a determination on exemption. Councilman Weisbecker inquired if the applicant could return to the Board if he is successful with the DEP, to which Mr. Germinario replied that this board would have to be directed by a court of competent jurisdiction. when asked to clarify, Mr. Germinario replied that the Board may not have to grant an extension, that the condition would have to be considered, and that water is a major concern and adequate water supplies would have to be confirmed.

Mr. Simon asked that the applicant's engineer, Wendell Inhoffer, be permitted to address the Board. He noted the intent of the applicant is to challenge the DEP denial and comply with the requirements outlined in the DEP letter dated February 5, 2009. He added that the applicant had appeared before the MUA and received their permission to come before this Board. He requested that certain documents be entered into evidence from Mr. Inhoffer and the DEP to prove that the applicant has made a diligent attempt to comply with all requirements in order for the necessary permits to be obtained. Mr. Germinario countered that the issue for the Board would be whether there is sufficient water, and the Board's Engineer was not prepared to address this at this meeting.

Wendell Inhoffer, P.E. was sworn as an expert witness by Mr. Germinario and testified that he has been involved with this project since the applicant purchased the property, that an extension of time is being sought in order to file major subdivision deeds, and the applicant had received prior extension. Exhibit 1-A was presented to the Board, containing numerous documents (60+) that included emails regarding construction permits, references to allocations, and well issues. The last documents was dated February 5, 2009 that was regarding issues with the wells, and a request was required within 30 days. He ascertained that the applicant should be able to obtain a permit to construct the necessary well, adding that the numbers from the three wells were recognized since the 1980's, that they have been through the Highlands and verified, and the permit issue will be resolved. He explained the issues that arose with the well permitting process and reviewed the gallonage, adding that the MUA determined that they have adequate water supplies. Mr. Ferriero advised that he started to review the matter and well data, but after receiving a copy of the letter from the Highlands rescinding their exemption, he did not investigate the matter any further. He stated that his understanding is that without the Highlands exemption or consistency, the applicant could not obtain a permit. Mr. Simon countered that there are options, including conditions that could be put in place, and the applicant could file an appeal. Mr. Simon requested that the applicant be granted an extension, especially due to the amount of time and money invested in the project, thereby allowing a means for the applicant to pursue his rights and appeal the matter. Mr. Simon contended that the extension was warranted, noting that the applicant could not construct under the law, and requested a six month extension, with an agreement to re-visit the matter at that time to determine the status fo the well permit and Highlands approval.

Mr. Germinario advised that before an extension could be granted the 2005 resolution would have to be modified, adding that the final plat could not be filed unless the resolution was amended. He noted that an extension of time grants immunity to the applicant. He stated that he did not feel that extension of time should be granted for the purpose of litigation. He advised the Board that they did not have the authority, based on the testimony presented on record at this meeting. Mr. Simon reiterated his request for an extension, amendment of the 2005 resolution, allowing the final plat to be signed but not filed by the applicant. He felt confident that when the DEP reviews the matter and information provided by the applicant, that they will reconsider and reverse their decision.

The matter was opened to the public for comment. The following addressed the Board regarding their concerns about this matter:

Richard Randazzo – Wooley Road – He commented about the attorney's comments.

Doris Aaronson – Bearfort Road – Requested the Board deny the extension requested by Village on Ridge. Ms. Aaronson presented documents to the Board attorney for review. She reviewed water and sewer issues, commenting that sewer lines are within 50 feet of the wells, and raised concerns about water quality and sufficient supplies. She objected to the extension and reviewed the negative criteria for denial based on environmental impact from the West Milford Land Development Ordinance: 1. will not result in harm to the environment, 2. has been designed and conceived with a concern about protection of regional resources; 3. will not place a disproportionate demand on total resources available for such proposal and future proposals. At the conclusion, Mr. Simon did not wish to cross examine but requested that all correspondence and communication with Ms. Aaronson and the DEP

be disregarded. Mr. Germinario noted that what Ms. Aaronson presented was heresy and it was to be treated as such by the Board. Mr. Germinario advised that the documents presented would be identified as O-1 and provided them to Mr. Simon for review.

Carl Richko – Shepherd Road – Read a letter from the DEP and noted his concerns with adequate water supplies.

James Warden – Highcrest Drive – He commented that the water rights of taxpayers are at stake.

Robert Nolan – Winding Way - Commented that if the Board grants extension, that it misconstrues what the Township wants.

Jim Novack – Larchmont Drive – He referred to a DEP letter to Diane Parette and noted that she retired over a year ago and suggested that a new MUA letter be obtained.

Peter Breyer – Macopin Road – He asked the Board not to approve the extension.

The public portion was closed on a **motion** by Chris Rosica and a **second** by Councilman Weisbecker.

Mr. Syme asked Mr. Germinario to review the issues. Following this, he advised the Board that they did not have any other recourse but to deny the extension request and the amendment of the resolution from 2005 to permit the final plats to be signed.

Motion to deny the request for a time extension and amendment of Resolution 2005-9 made by Mayor Bettina Bieri with a **second** by Chris Rosica.

Roll Call: **Yes** - Mayor Bettina Bieri, Steven Castronova, Richard McFadden, Douglas Ott, Chris Rosica, Michael Siesta, Clinton Smith, Geoffrey Syme, Councilman Philip Weisbecker.
No - None.

NEW APPLICATIONS - None.

MEMORIALIZATIONS – None.

PRESENTATION

Draft Streetscape Presentation – Dewberry Goodkind – Jim Floystrop

Jim Floystrop was present to address the Board regarding the draft streetscape plan. He noted that he had been working with Rich McFadden and Rob Sparkes in developing the plan. The projected schedule is to present it to the Township Council in March. The first phase would be pedestrian improvements with sidewalks and crosswalks. The second phase would include the streetscape, benches and lighting. He explained the exhibits that he had prepared and placed around the perimeter of the Council meeting room. He noted that the goal was unification based on the availability of funds. Many of the features were taken from the vision plan. The Board inquired about sidewalks, crosswalks, streetlights, and discussed various towns that have had streetscape improvements. Following review and discussion, Mr. Floystrop was requested to provide cost breakdowns of each phase and options available. He will work with Rich McFadden on this and come back to the Board in March. Councilman Weisbecker asked that a memo be sent to the Council on the recommendations of the Planning Board.

ORDINANCES FOR INTRODUCTION – None.

ORDINANCES REFERRED FROM COUNCIL – None.

BOARD ATTORNEY'S REPORT – None.

BOARD PLANNER'S REPORT – Chuck McGroarty advised that “Proposed Revisions to Land Use Regulations” regarding changes to various ordinances were distributed to the Board and he asked that they review them for discussion at the next Planning Board Workshop meeting. He noted that the farmer’s market ordinance was not included with this packet, but he will be providing a separate ordinance that will address this matter.

MISCELLANEOUS

Temporary Outdoor Activity Permit – Discussion on this matter was held to the next Workshop meeting.

By-Laws

Motion was made by Mayor Bettina Bieri with a **second** by Geoffrey Syme to approve By-Laws for the Township of West Milford Planning Board, as amended 02/26/09.

Roll Call: **Yes** - Mayor Bettina Bieri, Steven Castronova, Richard McFadden, Douglas Ott, Chris Rosica, Clinton Smith, Geoffrey Syme, Councilman Philip Weisbecker and Chairman Andrew Gargano.
No - None.

The Chairman advised that the Planning Board By-laws allow for all non-application, standard business items to be approved by voice vote, if unanimous, so future votes will take place in this manner.

SUBCOMMITTEE REPORTS

Master Plan Subcommittee – Nothing to be reported at this time.

Ordinance Subcommittee – Nothing to be reported at this time.

Design Standards Subcommittee – Nothing to be reported at this time.

Site Plan Subcommittee – Nothing to be reported at this time.

APPROVAL OF INVOICES – BOARD PROFESSIONALS

Motion was made by Chris Rosica with a **second** by Steven Castronova to approve the payment of the 2008 invoices and the current 2009 invoice report from Board professionals.

Roll Call: **Yes** - Mayor Bettina Bieri, Steven Castronova, Richard McFadden, Douglas Ott, Chris Rosica, Clinton Smith, Geoffrey Syme, Councilman Philip Weisbecker and Chairman Andrew Gargano.
 No - None.

MINUTES

Motion was made by Steven Castronova with a **second** by Councilman Weisbecker to approve the minutes of the January 8, 2009 Workshop Meeting, the January 22, 2009 Regular Meeting, and the February 5, 2009 Regular Meeting of the West Milford Planning Board. The minutes were approved by unanimous consent through a voice vote.

The following were noted and filed:

COMMUNICATIONS

1. Notice received from Keyspan Services for Paulus, Sokolowski & Sartor, LLC regarding Block 3802; Lot 3, on behalf of the West Milford Municipal Utilities Authority's Individual Transition Area Waiver application for the Upgrade of Wastewater Treatment Facility Capabilities.
2. No Further Action Letter and Covenant Not To Sue received from the NJ DEP regarding Block 13701; Lot 26, 26 Navajo Trail, with respect to a 300 gallon underground #2 heating oil tank removal.
3. Notice of a Freshwater Wetlands Application and GP 25 Permit for Steve Higgins, Block 8509; Lot 15, 8 Pinecrest Trail, with regard to installation of a subsurface sanitary disposal system.
4. Notice from the Hudson Essex Passaic Soil Conservation District certifying the plan submitted as meeting Standards for Soil Erosion and Sediment Control regarding Block 6303; Lot 15 & 16, Inserra (Shop Rite) Expansion.
5. Notice of Township of West Milford 2009 Volunteer of the Year program on April 22, 2009 and requesting nominations by March 20, 2009.

HIGHLANDS WATER PROTECTION AND PLANNING ACT

1. Notice of Technical Incompleteness for Highland's applicability application submitted by Mr. Wonton, LLC for Block 6303; Lot 18, 1546 Union Valley Road, requesting plans or documentation with regard to calculated values for existing and proposed impervious surfaces.
2. Agency Determination – Highland's Act Exempt #2 – Water Quality Management Plan – Consistent - received from the NJDEP dated February 3, 2009 regarding Block 3608; Lot 12, Ivy Lane, for the Estate of Muriel Anderson and the construction of a single family home.
3. Notice of Intent to Cancel dated January 29, 2009 for Awosting Association, Inc. and the Minor Subdivision of Block 4106; Lot 1, received from the NJDEP with regard to Highlands Applicability and Water Quality Management Plan Consistency Determination with an attached copy of the Second Notice of Technical Incompleteness dated January 7, 2009.
4. Application notice with attachments for Highland's Applicability Determination received from Cefes Financial dated 01/14/09 regarding Block 1806; Lot 4 & 5, Magnolia Road, for construction of a single family dwelling.
5. Letter from Tibor Latincics of Conklin Associates regarding the Awosting Association Minor Subdivision, dated February 18, 2009, objecting to the NJDEP Notice of Intent to Cancel the Highlands Applicability Determination request.
6. Notice of application for Highland's Applicability Determination received February 20, 2009 for Block 16006; Lot 1.01, 140 Oak Ridge Road, Shoebox Storage, LLC.

ADJOURNMENT

With no further business to come before the Board, the meeting adjourned at 10:37 p.m. on a **motion** by Chris Rosica and a **second** by Geoffrey Syme.

Approved: April 2, 2009

Respectfully submitted by,
Tonya E. Cubby
Secretary