

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

APRIL 22, 2010

Regular Meeting

The Regular Meeting of the Planning Board was opened at 7:32pm 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, Linda Connolly, Christopher Garcia, Richard McFadden, Douglas Ott, Councilman Philip Weisbecker, Chairman Andrew Gargano, Board Planner Charles McGroarty, P.P., Board Engineer Paul Ferriero, P.E.

Absent: Geoffrey Syme, Michael Siesta, Thomas Harraka, Board Attorney Thomas Germinario, Esq.

PUBLIC PORTION

The Chairman opened the meeting to the public and the following addressed the Planning Board:

Marilyn Lichtenberg – Hudson Drive, requested that the Board consider zone changes as a result of the Highlands Regional Master Plan and proposed re-evaluation in the Township. With regard to the proposed sign ordinance, Ms. Lichtenberg also requested that the Board consider allowing charitable organizations to erect signs or banners for 10 days. Board Planner, Chuck McGroarty, made note of her comments and will look into the matters.

The Chairman closed the Public Portion on a motion by Steven Castronova and a second by Councilman Weisbecker.

PRESENTATIONS

Interim Wastewater Management Plan

Paul Ferriero, P.E., distributed to the Planning Board an Interim Sewer Service Area Map for the proposed Interim Wastewater Management Plan. He began with some background on the W.W.M.P., explaining that this was essentially a zoning ordinance on how properties are sewerred, whether on-site septic, sanitary sewer systems, or on-site treatment plants. He reviewed the three categories: on-site septic systems with less than 2,000 gallons a day, those greater than 2,000 gallons day, and public sewer systems. Mr. Ferriero noted that the last plan for the Township was completed in 1987. The NJDEP had made all NJ counties responsible for the current required plans, but Passaic County opted not to do the plan, so the responsibility fell to the municipalities in the county. He stated that the proposed interim plan would show how sewage is treated in the Township, adding that this interim plan would be submitted to the NJDEP the following day, with the final plan due in one year. He further explained that West Milford is entirely in the preservation area, so there is a limit to what can be done. He noted that a future service area in the interim plan is Bubbling Springs, but there were some issues that will need to be addressed prior to service being available on this site. Another location, Brown's Point Plaza, will have an on-site treatment system. The service areas noted on the plan came from the DEP and he reviewed these with the M.U.A., Health Dept., and the Township to determine just what currently exists. He explained that the T-1 Permits indicate the sites that have more than 2,000 gallons per day. The NJDEP required information on the locations, so these were included on a map and into a database. Mr. Ferriero advised that the next phase was to identify the properties that have not applied for a T-1 and advise the owners that a permit is necessary. The goal is to work with the Health Dept. and anyone else who has information on the sites so that they are included in the plan.

Board Member Steven Castronova inquired what the advantages are to apply for a T-1 Permit and Mr. Ferriero responded that a site would be identified as registered and would be entitled to that flow (more than 2,000 gallons a day) in the future. The T-1 registration would graphically depict the sites that exist by identifying them on a map. Mr. Ferriero noted several changes in the plan, particularly two sites that lost their Highlands Exemption after they had received permits – Williamsburg and Eagles Ridge. He explained to the Board the difference between a 4-bedroom residential home that would typically use 650 gallons a day, as opposed to a 16,000 sq. ft. office building that would use more than 2,000 gallons per day. Mr. Ferriero advised that for the final plan due in one year, he would need to insert text and insure that the plan is consistent with the Highlands Regional Master Plan. At this time, there was no action required by the Governing Body or the Planning Board, just authorizing the record keeping to proceed. Mr. Ferriero also commented that the NJDEP had given guidance on sewer service areas, suggesting they carve through lots, but he was not in agreement with this, adding that the entire lot should include the sewer service area. Chairman Gargano inquired about the small cluster communities that have small lots and septic systems and wondered if they would have sewer services extended to them, and Mr. Ferriero replied that under the Highlands Regional Master Plan, sewer service cannot be extended to those areas. He noted that a Health and Safety Waiver would be required in order to install sewer service. In this instance, he added, the Highlands Act "trumped" the DEP, so no new plants can be built. Board Member Steven Castronova inquired about the Bubbling Springs site and Mr. Ferriero replied that a Health and Safety Waiver would be sought for this site, adding that he wanted to include it in the plan now and hoped that the DEP will approve of its inclusion in the plan.

Councilman Weisbecker inquired how the information in the plan compared with the M.U.A. records and Mr. Ferriero replied that he met with the M.U.A. and coordinated the information with them.

Councilman Weisbecker inquired about commercial areas where the soils are not conducive to septic systems, and Mr. Ferriero replied that the owner would have to deal with the Highlands plan. He further commented that redevelopment can be done, but redevelopment is somewhat different than what most people consider it to be, and added that a Highlands Redevelopment Waiver would be required for these sites. Councilman Weisbecker noted that he wanted to be prepared for properties that are known to have issues and may be “redeveloped” in the future. Mr. Ferreiro advised that these sites can be identified in the plan. When asked if West Milford was the only town filing the plan in Passaic County, Mr. Ferreiro replied that Ringwood and West Milford are the only towns that are serviced mostly by septic systems; the other Passaic County municipalities are mostly sewered. Chairman Gargano inquired how often the plan would have to be updated and Mr. Ferriero replied that an update was required every six years. He added that West Milford had received a grant for this current plan in the amount of \$10,000., and of that, \$9,000. had been used, with additional work needed. He had approached Eileen Swan from the Highlands Council for possible grant funds, but she would not know of any grant funding until after July. Mr. Ferriero concluded his presentation.

Draft Housing Element & Fair Share Plan

Chuck McGroarty, P.P., reviewed the Township of West Milford’s Draft Housing Element and Fair Share Plan that is required to be filed with COAH in June in order to conform to the Highlands Regional Master Plan. He noted that this plan protects the Township from a lawsuit in the event of a “builder’s remedy.” He commented on the reports that the new Governor planned to abolish COAH (Council on Affordable Housing), and said that the assembly will vote in May, so no one knows what will happen with affordable housing. He further added that the COAH requirements may change. At this time, he advised, the Township will proceed with the current COAH rules, preparing a full plan with the all the data available, schedule a public hearing for May 27, 2010, and present the plan at a Township Council meeting prior to filing the plan with COAH. If the rules change prior to the plan being filed, then he will adjust the plan. Councilman Weisbecker inquired who would be responsible for affordable housing if COAH is abolished, and Mr. McGroarty replied that the review may fall to the counties. He added that the State bill, S-1, had several revisions to date, but no new legislation was proposed at this time. Councilman Weisbecker inquired why the municipalities cannot be responsible instead of the counties. Mr. McGroarty commented that the rules have increased over the years and they really needed to be simplified, adding that the methodology will probably change significantly.

Mr. McGroarty proceeded to give an overview of the plan. He noted that prior round obligations had changed since 2004, especially with the demise of several large housing projects that were planned. The current obligation was at 98 units; 73 are existing, and with the rental bonuses, the number is brought to 98. He will present the plan to COAH noting that the prior round obligation had been met. He explained that the COAH formulas would not allow certain sites to be used, or, as in the case of Lincoln Hill Village, not all 51 age restricted units could be included in the same cycle. He advised that he had the Building and Planning Departments review their records and files for Certificates of Occupancies and affordable housing agreements, to arrive at the current number of 27 affordable units now required. He added that with the addition of the Bald Eagle Commons commercial units, some of the residential obligations would not be necessary. Mr. McGroarty suggested several options to meet the required 27 affordable units. He proposed that the Township consider using some of their vast supplies of vacant land to build duplexes on six lots, and then use two other lots in an agreement with a group home or other charitable organization to construct homes with 3 bedrooms each. The remaining obligation for 10 units are currently in existence today. He commented that this was being proposed as the plan for meeting our obligation for COAH certification. Another option would be “market to affordable” which would allow the Township or other non-profits to purchase homes and turn them into affordable units. He noted that this was an expensive option, requiring \$25,000. or more, up front, for each unit. He added that this was an expensive option, and unpredictable. Mr. McGroarty advised that he was meeting with the Land Use Administrator and the Chief Finance Officer the following day to determine just how much funds are available in the affordable housing trust fund.

Mr. McGroarty advised that he had provided the Housing Element and Fair Share Plan information to the Highlands Council for their review, adding that his fees for this plan will be covered under Module 3 from the Highlands Regional Master Plan grant, providing there are any monies remaining in the grant. Councilman Weisbecker inquired about land purchased for open space that has a COAH approved obligation, and Mr. McGroarty responded that COAH was surprised that one particular site, the Random Woods property, was being purchased for open space. He further explained that, generally, properties cannot be used for open space if they have COAH obligations attached. As for the other properties, including Eagles Ridge, Williamsburg, and Valley Ridge, he advised that they lost their Highlands Exemption so their obligations could not be included in the report. He then gave an example of how the COAH rules have changed with regard to obligations: if Valley Ridge were to be built today, with 100 residential units planned, the COAH obligation would have increased from 11 affordable units to 20 affordable units. He concluded the presentation by inquiring if the Planning Board wanted him to proceed with the proposed plan, and have the public hearing on May 27, 2010, before it is sent to the Council for recommendation. There was a consensus from the Planning Board for Mr. McGroarty to proceed with the proposed Housing Element and Fair Share Plan. Councilman Weisbecker inquired about funding for the plan, and Mr. McGroarty noted that he would know more once he reviews the files with the L.U.A. and C.F.O.

SITE PLAN APPLICATION REVIEW WAIVERS – None.

APPLICATIONS

EXTENSION OF TIME REQUESTS – None.

PENDING APPLICATIONS – None.

NEW APPLICATIONS – None.

NEW BUSINESS – None.

MEMORIALIZATIONS – None.

ORDINANCES FOR INTRODUCTION

Draft Wind Turbine Ordinance

Chuck McGroarty, Board Planner, opened the discussion on the draft wind turbine ordinance by discussing the State bill that determined wind turbines to be inherently beneficial uses. He also became aware of the fact that in 2009 the State amended the Land Use Law to allow wind and solar facilities to be permitted in industrial zones on 20 acres or more. He continued, stating that if there are one or more contiguous parcels under the same owner, that this would become a permitted use. The statute did not distinguish whether applied to a wind farm. He inquired whether the Board wanted to address the large industrial systems, or focus on the small, individual users. He noted that at the last meeting, wind farms were discussed. He wondered if we should move ahead, as the Environmental Commission has recommended, and address small individual users, knowing that in a short while we will have to address the industrial use of wind turbines. Councilman Weisbecker noted that large solar farms were also addressed in the statute. Paul Ferriero, Board Engineer, commented that he was aware of a recent application in another town that proposed clearing 60 acres of trees for the installation of 40 acres of solar panels. Mr. McGroarty noted that Mt. Olive was using parkland for a 22-acre solar farm. When a Board member inquired how the Highlands Act applied to these types of projects, Mr. Ferriero observed that due to the openings under the solar panels, they are not being considered impervious cover. Mr. McGroarty suggested that the Board go through the ordinance, include what they want, and he will send it to Fred Semrau, Township Attorney, for preparation of an ordinance for the Council's consideration.

The Board proceeded to discuss roof top turbines and the recommendation of the Environmental Commission to include large residential lots in the ordinance. The Board also discussed height, noting that the model ordinance uses 80 feet as the maximum height, but noted that the Building Official and Zoning Officer recommended using the cell tower height standards. Councilman Weisbecker suggested more than 4 acres be required. The Board members commented on roof top units and concurred that aesthetics are important when considering the ordinance standards. The Board also discussed the noise levels. Mr. McGroarty thought the Board had wanted to address only the industrial areas initially. He requested that the Board to decide on the height of the towers, the zones to permit the turbines, and the size lots, and he would include the other required information in the ordinance. He suggested that the model simulation requirement be removed. He also suggested that Paul Ferriero review the ordinance to determine how it relates to the requirements of a minor site plan. He stressed that the key issues before the Board were: where the wind turbines would be permitted and how high they should be. Councilman Weisbecker suggested 10-acres minimum for aesthetic reasons. Mr. McGroarty advised that the State has determined the setback requirements at no greater than 1 ½ times the system's height, adding that the Township cannot impose unreasonable restrictions. Mr. Ferreiro inquired whether a setback can require that it be a reasonable distance from a neighboring property owner's home. Mayor Bieri commented that she favored allowing the wind turbines on commercial property with residential sites restricted to rooftop turbines. Board Member Linda Connelly inquired about an applicant combining lots. Mr. McGroarty advised that LMI-Limited Manufacturing and Industrial, SED-Special Economic District, and OR-Office Research be the permitted zones. He explained to the Board why the other commercial zones should not be included. Mayor Bieri clarified that if an applicant wished to install a unit on a residential site, he can argue his case before the Zoning Board of Adjustment. As for rooftop units, Mr. Ferriero suggested that if it is part of the principal structure, and if it exceeds the maximum building height of 35 feet, it cannot be installed, unless they go to the Board of Adjustment. Rich McFadden, Board Member and Township Engineer, suggested that a maximum height of 10 feet be required above the roof level in order to encourage alternative energy uses. He added that it would discourage applicants if they wanted to install the units but had a two-story home and would have to go for a variance. Chuck McGroarty noted that the appropriate sections of the ordinance could be amended to state the maximum height of the principal structure and to allow for an exemption for this type of unit. Mayor Bieri agreed with Mr. McFadden that the Township should try to encourage alternative energy uses, and noted that permitting the rooftop units would not be objectionable.

The Board concurred that the three zones, LMI, SED, and OR, would be the permitted zones for wind turbines, and rooftop turbines would be permitted in residential zones. All others would require Board of Adjustment approval. Board Member Chris Garcia commented about NJ Core Rebate requirements for blade height, with the tip of the blade to be 30 feet above the highest obstacle within a 500-foot radius. He added that the higher the unit is, the less sound will result, noting that aesthetics with the height would then be the concern. Mr. McGroarty inquired whether height should be regulated to 135 feet if it is in a non-residential site. Mr. Garcia reviewed some of the other municipalities' ordinances for wind turbines, including Ocean Gate – 135 feet, Hillsborough – 120 feet, Brick – 125 feet, Galloway – 80 feet on 1 acre or 150 feet on a 3 acre lot, Oldmans(?) – 120 feet, Stafford – maximized wind velocity,

Beachwood – 145 feet, Berkeley – 135 feet, Brigantine – 80 feet. The Board concurred that 125 feet would be the maximum required height without requiring a variance. Mr. McGroarty advised that he would make the revisions and send the draft ordinance to Fred Semrau. The Board authorized Paul Ferriero and Rich McFadden to review the ordinance with regard to site plan standards that would be required. He suggested elimination of the photo simulation requirement and the Board concurred. He noted that the Planning Board would have to review the ordinance again when it is referred back from the Township Council.

Draft Sign Ordinance

Chuck McGroarty reviewed the draft sign ordinance with the Board and inquired whether the Board wanted to eliminate the sandwich board signs and require a sign similar to the exhibit he had presented to the Board at the April 1, 2010 Workshop. He noted that size can be regulated, along with not allowing illumination, but we cannot regulate a specific design. The Board discussed the use of sandwich board signs, and whether they could be considered if the business owners remove the signs at night. Mr. McGroarty noted that many are heavy and will not be taken in at night. Chairman Gargano advised that the ordinance should be prepared and if the sandwich boards are eliminated and the businesses or residents want them, they will have a public hearing to express their opinions. The Board concurred that the sandwich boards should be eliminated, but that additional signage for business sites will be permitted. Mr. McGroarty was to provide a draft document to the Board Secretary. The draft would be sent to the Chamber of Commerce and the Rotary with an invitation to attend the meeting to discuss in public in order to give the business community another opportunity for their input.

MISCELLANEOUS

Chairman Gargano noted that a resolution had been adopted by the Township Council for a contract with the Land Conservancy in the amount of \$14,000. to prepare an Open Space Plan. Mr. McGroarty advised that he received a copy of the resolution after it had been adopted, and noted that this was part of his function as the Township and Board Planner, adding that it was an element of the Highland's Regional Master Plan. He was somewhat surprised that the Township would be spending additional funds to another organization when he was doing a plan under the Highlands Master Plan. Mayor Bieri advised Mr. McGroarty that the Township Attorney would be contacting him with regard to this matter, adding that a specific property (Random Woods) was the subject of an open space purchase with certain grant monies involved. She apologized for the miscommunication.

With regard to Chairman Gargano's inquiry about down zoning, Mr. McGroarty advised that he is ready to down zone the formerly proposed Town Center properties, but he was waiting for the Highland's Council to respond back to him on this matter.

Steven Castronova inquired about the proposed Time of Decision Rule, and Mr. Ferriero noted that it had not yet passed. Mr. McGroarty explained that the towns would have to be aware of the zoning and could not change the zoning once an application has been filed.

Approval Of Invoices – Board Professionals

The invoices submitted by the Planning Board professionals depicted on the January/February/March report that was provided to the Planning Board were **unanimously approved** by the Board on a **motion** by Steven Castronova with a **second** by Councilman Weisbecker.

MINUTES

Motion by Councilman Philip Weisbecker with a **second** by Douglas Ott to approve the minutes of the April 1, 2010 Workshop Meeting. The minutes were **unanimously approved** by the members in attendance at that meeting.

The following were reviewed by the Planning Board and filed:

COMMUNICATIONS

State Planning Conference - April 23, 2010

HIGHLANDS WATER PROTECTION & PLANNING ACT/NJ DEP CORRESPONDENCE

1. Notice of application to the NJDEP, received March 30, 2010, for a Highlands Preservation Area Approval and Highlands Resource Area Determination submitted by Oak Ridge Road Associates LLC, 209 Oak Ridge Road, Block 15901; Lot 1 with regard to an existing industrial facility with a proposed parking lot expansion.
2. Notification of an application to the NJDEP, received April 7, 2010, for a GP #25 with regard to the repair of an existing septic system for Yoram Rosen, 64 Kitchell Lake Drive, Block 4901; Lot 15.
3. Highlands Act – Exemption #4; Water Quality Management Plan – Consistent, dated April 1, 2010, for improvements to the Nosenzo Pond Dam, Block 9302; Lot 16, for the Roman Catholic Diocese of Paterson.
4. Highlands Act – Exemption #5; Water Quality Management Plan – Consistent, dated March 29, 2010, for a residential addition and septic system replacement, Block 12001; Lot 36.01, 166 Maple Road, for Oleksiy and Tomira Luchynski.
5. Updated Highlands Act Determination – Exempt; Water Quality Management Plan – Consistent, dated March 26, 2010, for Shiloh Bible Camp Gymnasium, Block 6002; Lot 47, based on the revisions to the WQMP

to identify the existing discharge to groundwater wastewater treatment and disposal facility that serves the Shiloh Bible Camp.

6. Copy of an application for a GP#25, received April 6, 2010, for Block 3005; Lot 1, 47 Dogwood Lane, with regard to replacement of a malfunctioning septic system.
7. Authorization for a Freshwater Wetlands General Permit, Water quality Certification and Waiver of Transition Area for Access for Block 9302; Lot 16, Roman Catholic Diocese of Paterson, with regard to the rehabilitation of the Nosenzo Pond Dam.
8. Copy of an application for a general permit received April 13, 2010 for Block 6001; Lot 7, 418 Morsetown Road, Raymond Spellman, with regard to clearing of trees and installation of a subsurface sanitary system.
9. *No Further Action* letter, dated March 26, 2010, for Block 14702; Lot 8, 18-24 Kanouse Road, for Kanouse Enterprises Inc, with regard to removal of a 6,000 gallon underground #2 Fuel Oil Storage Tank.
10. *No Further Action* letter, dated March 25, 2010, for Block 408; Lot 25, 64 Larchmont Drive, for Michael and Deborah Prus, with regard to remediation of a 550 gallon underground fuel oil storage tank and associated contaminated soils and limited area of contaminated surface runoff on Lot 24.
11. Public Notification from Exxon Service Station, Block 3504; Lot 31, Lakeside Road, NJDEP Case #09-07-20-1606-22, noting that compounds have been detected in the soil and groundwater within the property boundary, and advising that Exxon Mobil is working with the NJDEP to complete the environmental work at this site.
12. Copy of a Letter of Resolution from the NJDEP, dated March 26, 2010, sent to Gregg Rodriguez, 50 Oxbow Lane, Block 14901; Lot 35, with regard to restoration of the site under the direction of the DEP.
13. Copy of a letter from NJDEP, dated March 25, 2010, to Christopher Coughlin, Camp Wyanokie Commission, with regard to completion of the work on the Boy Scout Lake Dam, NJDEP File No. 22-182, Class III, and noting that inspections are required every 4 years.
14. Letter from Tennessee Gas Pipeline, dated March 29, 2010, notifying the Township of outreach efforts that will be ongoing during the 300 Line Project.
15. Copy of a letter from the NJDEP to the City of Newark regarding the Macopin Reservoir Dam and Cedar Pond Dam, advising that the Macopin Reservoir Dam compliance schedule (CS) is acceptable, but the CS for the Cedar Pond Dam is unacceptable, and requesting a more aggressive schedule for repair of the dam.
16. Copy of a letter from the NJDEP, dated March 29, 2010, to the Roman Catholic Diocese of Paterson, regarding the Nosenzo Pond Dam (NJDEP File No. 22-241), advising that the dam is a Class II dam (Significant Hazard), and requiring the owner to provide a construction schedule within 15 days of the receipt of this letter.
17. Potable Well Water Analysis in the vicinity of the Shell Service Station #138443, Route 23 and Union Valley Road for the following: Marco Silvestri, Block 14605; Lot 1-4, Lakeland Plaza 1 & 2, Buddy Bealer, Shell Oil Co., Block 14604; Lot 1, and 23 Electric Supply, Block 576; Lot 1, noting that the water obtained from the wells were acceptable for drinking water purposes.

ADJOURNMENT

With no further business to come before the Board, the Planning Board Regular Meeting of April 22, 2010 **adjourned** at **9:54pm** on a **motion** by Councilman Philip Weisbecker with a **second** by Richard McFadden.

Approved: May 27, 2010

Respectfully submitted by,

Tonya E. Cubby, Secretary