

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

April 28, 2011

Regular Meeting

The Regular Meeting of the Planning Board was opened at 7:33 pm by Chairman Andrew Gargano with a reading of the Legal Notice, followed by the Pledge of Allegiance.

ROLL CALL

Present: Mayor Bettina Bieri, Linda Connolly, Christopher Garcia, Robert Nolan, Douglas Ott, Geoffrey Syme, *Vacancy*, Councilman Philip Weisbecker, Michael Siesta, Steven Castronova, Chairman Andrew Gargano, Board Attorney Thomas Germinario, Esq., Board Planner Charles McGroarty, P.P., Board Engineer Paul Ferriero, P.E.

Absent: None.

Chairman Andrew Gargano requested Planning Board Alternate Michael Siesta to sit on the Board in the vacant position.

PUBLIC PORTION

Prior to commencing with the Public Portion of the meeting, Board Attorney Thomas Germinario made the following statement:

“Before we get started with the public portion, I understand that there are some residents who would like to comment on the well testing for the Braemar project. Because that application is not yet complete, but it is a pending application, we are not going to discuss any of the substantive issues of that application tonight. We’re not going to discuss, for example, whether there is adequate water there or any other issues pertaining to the actual merits of that application. We will hear the residents on their concerns about the procedures for the well testing because I understand some local property owners feel that their wells should have been tested or that they didn’t receive adequate notice of the testing. We will pass those concerns and facts along to the hydrogeologist, our consultant Matt Mulhall, so that he knows about it. But we, in the absence of the applicant and without a public notice or public hearing, are not going to get into any of the actual issues of the application itself. So please understand that and keep your comments directed toward the subject matter of the aquifer testing procedure.”

Chairman Gargano subsequently opened the Public Portion of the meeting.

The following addressed the Planning Board about matters of concern:

Richard Randazzo, 278 Wooley Road, read a statement to the Planning Board expressing various concerns upon receipt of notice of the aquifer testing for the proposed development of Virginia Lane, located off Wooley Road. He stated that he was under the assumption that the permits and approvals had expired in 2005 and 2008, including the L.O.I., Transition Area Waiver Averaging Plan Approval for General Permit #6, Freshwater Wetlands General Permit #10, and the Highlands Exemption. He referenced letters from 2007 to various Township officials and the NJDEP regarding the status of the project. He inquired of the Planning Board whether the Highlands Exemption was still valid for this application and whether the other permits and approvals were still valid. He noted that the testing was being conducted in two phases, and that the lots being tested are of varying acreage, so the results would not be an accurate account of the water availability. Mr. Randazzo also stated that there were errors in the approved test plan and correspondence from Maser with regard to gallonage withdrawn during the testing phase. He requested that the Planning Board monitor the water testing so that the existing water supply is protected. Mr. Randazzo confirmed that Braemar’s hydrogeologist, Maser, would now be including his property in the aquifer testing after he pressured them to include his well. He stated that the first time the wells were tested, he had been informed that there was insufficient water at the proposed subdivision location. Mr. Randazzo expressed concern that water supplies will run out within six months for the existing and new residents who occupy the houses following construction, and he noted that the well testing ordinance was developed specifically for this reason. He alleged that the two houses for the subdivision were developed without proper approvals and that, upon examination, documents were missing from the files during the preliminary subdivision process. He stated and that he wanted to remain in West Milford and have sufficient water not only for the existing residents but the new residents, and that he was in favor of development, but feels that there is insufficient water to support 16 additional houses. Mr. Randazzo concluded by providing copies of letters to Mr. Germinario regarding the permits and exemptions that he referenced in his prepared statement.

Cheryl Hogan Mueller, 284 Wooley Road, addressed the Board, noting that she resided next to the proposed development, and reviewed her concerns about the aquifer testing, adding that she was currently included in the well testing. She advised that the applicant’s hydrogeologist (Maser) expressed surprise to her that the Township’s hydrogeologist (M2) had approved the well testing to take place at this time, especially with the past winter’s snowfall and the recent spring rains resulting in a very high water table, and Ms. Mueller questioned how accurate the results would be. She inquired why the Township’s ordinance stated that well testing could not be performed after receiving more than a half-inch of rain and requested some explanation on the conflicting information that she received that the recent rains would not affect the test results. She stated that the water drawdown taking place during this time period is in the best interest of the developer and not the residents. Ms. Mueller explained that her well is 360 feet deep, and she has had insufficient water due to poor recharge for many years, and was concerned about devaluation of her and her neighbor’s homes. She noted that there was no

guarantee how the water will flow through the rock fractures and what the water table will be after 16 additional wells are put in use. She felt that her experience, and those of the neighbors, should alert those in authority. She spoke to the Board about the limited testing completed by the prior developer, and the poor recharge that resulted. She emphasized that she was not opposed to building and wanted a safe neighborhood for her family, but also wanted sufficient water for all the residents. She stressed that the water problems of the existing residents are chronic. She asked that her concerns be shared with the Township's hydrogeologist, and invited the Board to her home to witness, for themselves, the poor recharge with normal daily use. She later inquired of the Board how the recharge or static level could be determined if she was told by Maser's hydrogeologist not to use her water during the testing period, and that the accuracy of the test would be questionable.

Sue Latronica, 307 Wooley Road, addressed the Planning Board and concurred with the previous statements of Cheryl Mueller. She noted that she has resided in her home for 12 years and did not have problems with her 400 foot well up until this time, but during the past week of the Braemar well testing she has experienced insufficient water. She spoke to a well driller who advised her to log in her daily use, and she has documented the low water levels following a shower, or laundry, etc. in spite of leaving sufficient time to recharge. With regard to notification of the residents, she received her notice hand delivered by Maser, not by mail along with the surrounding residents. She advised the hydrogeologist that she wanted her well included in the testing, but was denied by Maser because her property was too far from the development, although her letter stated that she was within 500 feet of Virginia Lane. She asked that someone to authorize the well monitoring at her home, too, and expressed her concern about property devaluation because of insufficient water resulting from the proposed development.

Doris Aaronson, Bearfort Road, approached the dais and attempted to distribute well data to the Board Members, but was advised by the Board Attorney that the information could prejudice the Board, and in the absence of the applicant or his attorney, the information she was distributing did not meet the requirements of procedural due process. He advised Ms. Aaronson that he would provide the information to the Township's hydrogeologist. He noted that the local homeowners have been given some latitude in this regard, but the speakers should limit their comments to the methodology of the testing. Ms. Aaronson inquired whether the test results would be a fair statement of the well yields and recovery based on the limited testing that is being performed, and stated that the developer and hydrogeologist have ways of finding out where the aquifer was more lucrative and could be selective in their testing locations. Mr. Germinario advised her that the Planning Board has retained a qualified hydrogeologist, Matt Mulhall, and that they have confidence that if there is any unrepresentative selection of monitoring wells and locations, that Mr. Mulhall has the expertise to know this and to see that the well testing is representative. Mr. Germinario asked Ms. Aaronson if she had any specific information about this developer that indicates that the well testing was devised, and Ms. Aaronson replied that she did not. She then stated the entire Township is in a water deficit area and that the Township Well Study Committee examined the well depths and yields for the proposed Eagle Ridge development, and the DEP subsequently denied their well permits because of this. She also stated that the data that is on file for the previous well testing at the Braemar subdivision shows the well depths and well yields are twice as poor as the Eagle Ridge site, so the existing data supports what the residents are saying about insufficient water, and that the entire area is very poor in terms of well yield.

Marcia Buttery, 291 Wooley Road, addressed the Board, and stated that her well is also being monitored during the well testing for Braemar. She noted that she has a 500-foot well and her pump is 480 feet down and she has resided in her home for 18 years, but if the water is left running for any length of time, she will run out of water. She also noted that she gets approximately 3 pints (?) of water per minute. She has replaced all of her toilets to water savers units, purchased a front load washer, and has done everything she could to conserve water over the years. Ms. Buttery stated that unless she has water running for any length of time, she does not have a problem. She did note, however, that she had a plumbing problem this past winter with a toilet left running, and she incurred numerous expenses with the repairs to her fixtures, appliances, and pipes that were damaged from the sediment from the well. She was concerned about the long-term effects on all the appliances and plumbing fixtures in the residences. Ms. Buttery also inquired about the number of test wells that have been installed, and was told by the hydrogeologist there were 10 test wells, but she was under the assumption that there were 5 tests wells, and wondered how 5 new wells could have been installed without anyone's knowledge. Ms. Buttery commented that two houses appear to have been constructed overnight, without proper approvals, and wondered whether anyone is monitoring the situation.

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

Chairman Gargano advised the residents present that their public comments regarding the aquifer testing would be provided to Matt Mulhall of M2 via an audio CD and a copy of the minutes. With regard to an inquiry from the audience as to when their concerns will be addressed, Mr. Germinario advised that answers to their questions may either be in the form of how the Board rules on the completeness of this application or, if it is ruled to be complete, when the public hearing takes place for this application.

APPLICATIONS

NEW APPLICATIONS – None.

PENDING APPLICATIONS – None.

EXTENSION OF TIME

RESOLUTION NO. 2011-11

MR. WONTON LLC

Preliminary & Final Site Plan #0720-0305AB

Block 6303; Lot 18

1546 Union Valley Road; VC Zone

Seeking: One Year Extension of Time for Final Site Plan Approval that was originally granted on December 4, 2008.

Yan Huang, Union Valley Road, was present to address the Board regarding his request for an extension of time for his final site plan approval. Mr. Germinario inquired about the need for an extension and Mr. Huang advised that he had been held up from completing the project while he was attempting to get his Highlands and Passaic County approvals, and he is currently being delayed while waiting for a review of his bond estimate for the unimproved site work. Mr. Ferreiro advised the Board that the information is on his desk and he will get something in writing to the Secretary as soon as possible. Mr. Germinario advised the Board that it appeared the applicant had been diligent in getting all his approvals and the delay was through no fault of his own. Mr. Huang noted that since the approvals were almost complete he was requesting the Board to allow him to start interior work on the building. Mr. Ferreiro stated that he would review the project and bond estimate, and would contact the Building Dept. to advise them that permits may be issued for interior work only.

Motion by Councilman Philip Weisbecker with a **second** by Robert Nolan to **approve** the Time Extension for Final Site Plan #0720-0305AB and Resolution No. 2011-11 for Mr. Wonton, LLC, for a period of one year, or until December 4, 2011.

Roll Call: Yes: Mayor Bettina Bieri, Linda Connolly, Christopher Garcia, Robert Nolan, Douglas Ott, Michael Siesta, Geoffrey Syme, Councilman Philip Weisbecker, Chairman Andrew Gargano.

No: None.

NEW BUSINESS

Review of Land Use Application Checklist Revisions – Paul Ferreiro, Board Engineer, reviewed the revised checklist format that had been provided to the Board. The Board Secretary advised that the Zoning Board of Adjustment might have some comments with regard to the checklists, as they will also be using these with their applications. An initial comment from the ZBOA Secretary concerned the number of plans required for a bulk variance, and Mr. Ferreiro agreed that 26 plans for a bulk variance was excessive and he will re-examine the amounts required. He also noted that there is a requirement in the Highlands model ordinance that all applicants must get Highland's approval before filing Board applications, but this requirement was not in the Township's original checklist, so he will not include it in the revised checklist. Robert Nolan remarked that the applicants should be in compliance with the well ordinance, and Mr. Ferreiro made a note to include it. Councilman Weisbecker commented that the Lakes Committee was working on an ordinance that would require larger applications to notify the Lake Associations of a pending application. Mr. Ferreiro replied that the revised checklist could state that if a project is of regional significance it will require notification of the Lakes Committee. Mr. Ferreiro advised that any further comments would be considered before the final version is sent to the Township Council. Chairman Gargano requested that this be kept on the agenda for the next meeting.

Update on Streetscape – Paul Ferreiro reported that the Streetscape Plan is in the conceptual stage, and that construction plans have not been completed. He explained that the entire project requires significant areas of right of way that must be addressed before the project moves forward, and parking areas and residents' properties will be affected. He stressed that an overall review of the budget and the remaining funds must be completed. He also noted that the Township Administrator planned to have a public meeting to get input from the residents. Chairman Gargano inquired about the approximate timeframe for getting this project moving forward, and Mr. Ferreiro replied that a meeting was supposed to take place after this past winter. Steven Castronova commented that this was basically the same position the project was left at several years ago. Mr. Ferreiro recalled that there was a public meeting with Dewberry several years ago, and that the Board had made recommendations on various elements of the plan, including lighting, sidewalks, pavers, etc. He assured the Board that he will work with the Administrator to move this forward. Robert Nolan commented that goals and objectives and completion dates are necessary for this project to get done. Councilman Weisbecker observed that the Township had confidence in the original engineer that they contracted with to do the streetscape project, and felt that it was the engineer who had failed to move this forward. Mr. Ferreiro noted, again, that he would follow up on this so that there would be some progress. Chairman Gargano requested that this item be placed on the agenda for further discussion with regard to future applications that come before the Board to determine whether they will be required to incorporate the streetscape plan in their application. Mr. Ferreiro will also provide some material to guide the Board with their discussion. On a related matter, the Secretary was requested to inquire about the status of the Passaic County Corridor Enhancement Fund and the current funds that are available to the Township under this program.

ORDINANCES FOR INTRODUCTION

ORDINANCES REFERRED FROM COUNCIL

BOARD PLANNER'S REPORT – Chuck McGroarty, Board Planner, advised the Planning Board that the revised sign ordinance was to be presented to the Township Council the following week.

With regard to the Highlands Plan Conformance, Mr. McGroarty advised of receipt of a letter that the amended grant agreement for additional grant funds has been approved and signed by the Highlands Council. He will continue to work on the Highlands Master Plan when the amended grant funds are in place, most likely in the next several weeks. He noted that everything required of the Township is complete up until this point and we will continue to move forward.

BOARD ATTORNEY'S REPORT – None.

BOARD ENGINEER'S REPORT – None.

MISCELLANEOUS

Councilman Weisbecker requested that the memo with the attached emails received from the Health Officer with regard to George DeGraw and Brookside Development LLC subdivision be placed in the file. He requested that the Board receive pertinent information from other departments prior to considering an extension of time request so that the applicant can address any issues prior to coming before the Board. Mr. Germinario concurred with this suggestion, and advised that he and Paul Ferriero will discuss the matter and develop a simple procedure that can be followed in the event of a time extension request. Mr. Ferriero suggested that the applicant should be required to provide a status on their current condition of approvals. The Secretary noted that she would confer with the Land Use Administrator on this matter, and will also place this on the next agenda for discussion.

On another matter, Douglas Ott inquired about the standard amount of water that is required in order for a new residence to get a Certificate of Occupancy, and expressed concern that new homes are built without sufficient water. Paul Ferriero replied that he did not know the standard and suggested that building permits could be withheld if there are not sufficient well yields. Robert Nolan commented that the well ordinance should be reviewed with regard to new construction and Chuck McGroarty was requested to research this and report back to the Board.

Approval Of Invoices – Board Professionals

Motion by Councilman Philip Weisbecker with a **second** by Robert Nolan to **approve** payment of the invoices for the months of January, February and March 2011. The invoices were approved by **unanimous consent** of the Board.

MINUTES

Approval of Minutes from the December 2, 2010 Regular Meeting, the January 6, 2011 Re-organization Meeting, the January 6, 2011 Workshop Meeting, the January 27, 2011 Regular Meeting, the February 3, 2011 Regular Meeting, February 24, 2011 Regular Meeting.

Motion by Geoffrey Syme with a **second** by Christopher Garcia to **approve** the December 2, 2011 Minutes of the Planning Board.

Roll Call: **Yes:** Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Christopher Garcia, Michael Siesta, Geoffrey Syme, Chairman Andrew Gargano.
 No: None.

Motion by Councilman Philip Weisbecker with a **second** by Robert Nolan to **approve** the January 6, 2011 Re-organization and Workshop Meeting Minutes of the Planning Board. The minutes were approved by **unanimous consent** of the Board.

Motion by Councilman Philip Weisbecker with a **second** by Robert Nolan to **approve** the January 27, 2011 Regular Meeting Minutes of the Planning Board. The minutes were approved by **unanimous consent** of the Board.

Motion by Michael Siesta with a **second** by Councilman Philip Weisbecker to **approve** the February 3, 2011 Regular Meeting Minutes of the Planning Board.

Roll Call: **Yes:** Mayor Bettina Bieri, Linda Connolly, Christopher Garcia, Douglas Ott, Michael Siesta, Geoffrey Syme, Councilman Philip Weisbecker, Chairman Andrew Gargano.
 No: None.

Motion by Michael Siesta with a **second** by Councilman Philip Weisbecker to **approve** the February 24, 2011 Regular Meeting Minutes of the Planning Board. The minutes were approved by **unanimous consent** of the Board.

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

COMMUNICATIONS

1. Notice received April 1, 2011 regarding the Passaic County Brownfields Commission meeting on April 20, 2011 at 3 pm, with speaker Wayne Staub, Office of Economic Growth and Green Energy, NJDEP.
2. Memo from Kevin Boyle, Township Administrator, dated April 6, 2011, identifying the properties that the Township has acquired since 2009 (Gallman Tract, Random woods, CYO Fields) with the addition of Apple Valley Estates in the near future.

3. Petition from residents of Macopin Road and Wooley Road regarding the required aquifer testing for the Braemar at West Milford subdivision and requesting that the testing be postponed until they have met with the Township and applicant's hydrogeologists.
4. Report from Matt Mulhall, M2 Associates, dated April 20, 2011, advising of the impending aquifer testing for the Braemar at West Milford subdivision, outlining details of the testing procedures that are scheduled to begin April 25, 2011.

HIGHLANDS WATER PROTECTION & PLANNING ACT / NJ DEP CORRESPONDENCE

1. Notice of an application for a Freshwater Wetlands General Permit application received on April 15, 2011 from Tennessee Gas Pipeline.
2. Notice from Tennessee Gas Pipeline, dated April 14, 2011, advising that TGP applied to FERC for a Certificate of Public Convenience and Necessity with regard to the proposed construction, installation, modification, operation and maintenance of the Northeast Upgrade Project facilities to increase pipeline capacity to provide up to an additional 636,000 dekatherms per day of firm natural gas transportation service to northeast U.S. markets.
3. Letter from the Tennessee Gas Pipeline, dated April 13, 2011, updating the Township on the Northeast Upgrade project, and advising that additional information may be obtained at www.elpaso.com/northeastupgrade.
4. Draft Settlement Agreement copy received from the NJ DEP, dated April 11, 2011, regarding Ernie and Barbara Suto, 24 Dudley Street, Block 11001; Lot 58 to settle violations of the Freshwater Wetlands Protection and Flood Hazard Area Control Act at the subject site.
5. Flood Hazard Area Applicability Determination received from the NJ DEP, dated March 30, 2011, regarding Robert Kruitof, Block 2704; Lot 7, determining that no written flood hazard area approval is required for the septic alteration along Upper Greenwood Lake.
6. No Further Action letter received from the NJ DEP, dated March 30, 2011 regarding Giuseppe Macaluso, 20 Barnegat Rd, Block 1206; Lot 3 for the removal of a 550 gallon #2 Heating Oil Underground Storage Tank.
7. Letter from the NJ DEP Bureau of Dam Safety & Flood Control, dated April 7, 2011, regarding Zeliff Pond Dam, advising owner Allison Hasford, 2 Pond Farm, Weaver Road, that the Zeliff Pond Dam height is 6.97 feet, therefore requiring plans to be submitted implementing the modification necessary to lower the existing dam to the regulatory height of 5 feet, or complete necessary studies to demonstrate why the existing dam can be classified as a Class III, Low Hazard Dam.
8. Highlands Applicability Determination Application copy received on April 20, 2011, regarding Paul Kas, 1910 Union Valley road, Block 6701; Lots 8 & 9, regarding the Lukoil site and the proposed conversion of one of the three existing bays into a convenience store, with expansion of parking and canopy over the gas pumps.
9. Potable Well Water Analysis received on March 29, 2011 from Sovereign Consulting regarding results of water samples by Accutest for Waseem Choudhary, 2731 Rt. 23, Newfoundland, Block 14604; Lot 1 with reference to the Shell Service Station, advising that no regulated compounds were detected at concentrations above the standards, with attached report.
10. Potable Well Water Analysis received on March 29, 2011 from Sovereign Consulting regarding results of water samples by Accutest for S. Sisti & John Mcdavitt, 2750 Rt. 23, Newfoundland, Block 14601; Lot 12 with reference to the Shell Service Station, advising that no regulated compounds were detected at concentrations above the standards, with attached report.
11. Potable Well Water Analysis received on March 29, 2011 from Sovereign Consulting regarding results of water samples by Accutest for Marco Silvestri, 2713 Rt. 23, Newfoundland, Block 14605; Lot 4.01 with reference to the Shell Service Station, advising that no regulated compounds were detected at concentrations above the standards, with attached report.
12. Letter from Hatch Mott MacDonald, dated April 15, 2011, advising that the Passaic County Public Works Division of Engineering was amending their Highlands Applicability and Water Quality Management Plan Consistency Determination Application for the Replacement of Clinton Road over Mossman's Brook Bridge No. 1600-175 and were seeking Exemption #10 instead of the original Exemption #9.
13. Notice of Administrative Completeness, dated March 18, 2011, received from the NJ DEP regarding a Highlands Applicability and WQMP Consistency Determination for the Pequannock Water Treatment Plant Improvement, Route 23, Blocks 14010 and 14102; Lot 1.

ADJOURNMENT

Prior to adjourning, Chairman Gargano advised that the next Planning Board Workshop meeting will be canceled if there are no matters that require Board attention.

With no further business to come before the Board, Chairman Andrew Gargano **adjourned** the April 28, 2011 Regular Meeting of the West Milford Planning Board at **8:45 pm** on a **motion** by Robert Nolan with a **second** by Michael Siesta.

Approved: May 26, 2011

Respectfully submitted by,

Tonya E. Cubby, Secretary