

**TOWNSHIP OF WEST MILFORD  
PLANNING BOARD**

**MINUTES**

**May 23, 2013**

**Regular Meeting**

The Regular Meeting of the West Milford Planning Board was opened at **7:34 p.m.** by Chairman Geoffrey Syme with a reading of the Legal Notice, followed by the Pledge of Allegiance and Roll Call.

**ROLL CALL**

**Present:** Mayor Bettina Bieri, Christopher Garcia, Andrew Gargano, Robert Nolan, Councilman Luciano Signorino, Glenn Wenzel, Alternate Steven Castronova, Chairman Geoffrey Syme, Board Attorney Thomas Germinario, Board Engineer John Hansen, P.E.

**Absent:** Linda Connolly, Douglas Ott, Michael Siesta, Board Planner Chuck McGroarty.

Chairman Geoffrey Syme requested Alternate Steven Castronova to sit in for one of the absent Board Members. He noted that there was a quorum present for this regular meeting.

**PUBLIC PORTION**

Chairman Syme opened the Public Portion of the meeting and the following addressed the Board:

Richard Randazzo, Wooley Road, addressed the Board regarding the Braemar development on Wooley Road, noting that the applicant was required to comply with the Township well ordinance and verify that the Highlands was reinstated. Mr. Randazzo referred to a prior aquifer test that was performed at the site and suggested that the applicant may have “cherry picked” the results. He stated that a former hydrogeologist, Dan Nachman, had reported that there was insufficient water at the time of the prior tests, and that there was insufficient water to sustain current and future development. Mr. Randazzo inquired why the previous aquifer testing report was not being used to determine the aquifer results. He asserted that the applicant will drill into another aquifer, since there are two aquifers on the site, in order to get the results that he wants to prove an adequate water supply. Mr. Randazzo cautioned that if this is permitted, other developers may attempt to get Planning Board approval for more development.

Board Attorney Tom Germinario responded that the applicant, Braemar at West Milford, could not use the prior test results under the current ordinance since they would not meet the protocol of the Township’s aquifer ordinance. With regard to mining for water, Mr. Germinario advised that there are provisions in the new ordinance to determine if an applicant is mining water, and they have to prove adequate water and recharge, as well as demonstrate that it can be maintained. Mr. Germinario continued, noting that when the prior testing report was reviewed by Matt Mulhall of M2, he expressed concern about possible mining, so when the applicant returned to the Board, he was advised that he must comply with the new aquifer testing ordinance. Mr. Germinario further stated that he did not feel that the Highlands reinstatement had anything to do with the aquifer testing, but that the applicant reached a settlement with the NJDEP regarding the Highlands approval to avert a court hearing. He noted that this Planning Board was not privy to the information surrounding that agreement, and suggested that Mr. Randazzo would have to OPRA the NJDEP to get that information.

Mr. Randazzo responded that there didn’t appear to be a paper trail, but he contended that someone was directed to reinstate the Highlands approval for the Braemar subdivision. He further stated that in the area of the proposed development, there is bedrock, and water does not drain into the aquifer. He expressed his concern that 16 additional houses would drain water from other existing residences. Mr. Germinario recalled the hydrogeologist’s comments about the prior well testing in 2005, and his comments were that the report did not demonstrate sufficient water, which was different from him saying that it could not support 16 new houses. He further advised that the aquifer ordinance requires pumping at a certain rate, and the results will be interpreted to determine if there is adequate water. Mr. Randazzo countered that he recalled Mr. Mulhall stating that the applicant can “test from here to eternity – there is not enough water.” Mr. Germinario advised Mr. Randazzo that if there are public health and safety concerns, he should bring his concerns to the Township Council, since the Planning Board can only deal with land use issues. He continued, stating that if the State of New Jersey allows hydrofracking of wells, then the Planning Board has to allow it, since it is a legitimate way of developing a well, and the testing procedures will prove this since the DEP and Health Dept. have certain requirements that must be met with regard to well drilling. Mr. Randazzo closed by stating that there was not sufficient water in the Township, not just at the Wooley Road site, but in other areas of town.

With no further requests to address the Planning Board, the Public Portion was **closed** on a **motion** by Glenn Wenzel with a **second** by Councilman Lou Signorino.

**APPLICATIONS**

**NEW APPLICATIONS** – None.

## **AMENDMENT TO APPLICATION**

### **SUN YOUNG JOO**

#### **Amended Major Soil Removal/Fill Permit #PB-05-12-05**

Block 10402; Lot 12

55 Green Terrace Way; R-4 Zone

**Re:** Review and possible amendment of stormwater, drainage, and soil erosion remediation measures pertaining to the Major Soil Removal/Fill Permit approval memorialized by Resolution No. 2013-7 and Resolution 2013-10 for the prior re-grading of an existing 4-acre residential site.

Chairman Syme called the above matter before the Planning Board, Sun Young Joo Amended Major Soil Removal/Fill Permit. Gerald Gardner, P.E., of Houser Engineering, was present to address this matter with the Board. Board Attorney Tom Germinario noted that Mr. Gardner remained under oath from prior testimony. Mr. Gardner thanked the Board for their continued patience and advised that his client, Sun Young Joo, was willing to do anything that would be practical to resolve the issues. He noted that the attorney for the applicant, Donald Kim, was based in Manhattan, and he was finding it difficult to continue with this application, so the Joo's are planning to engage a land use attorney to address the various legal issues, including easements, that are involved with this matter. Mr. Gardner further stated that the applicant intends to address the issues so that the results are fair to all the parties involved, and he was requesting from the Board, on behalf of the applicant, a two-week extension so that the applicant can secure a new attorney.

Chairman Syme advised the Board that the plan they recently approved revealed an issue with a wetlands buffer area and it would require NJDEP permits, further delaying the project. Board Engineer John Hansen, Ferriero Engineering, advised the Board that he was present at the meeting to answer questions, but that this was a legal situation, so he would defer to the Board Attorney. He added that his office would do whatever they could to resolve the matter and will work quickly to ensure that this project moves forward. Mr. Germinario advised the Board that he had an opportunity to discuss the matter with the Township Attorney, Fred Semrau, and he agreed with Mr. Germinario that this would result in a positive outcome, and would help to expedite the matter if the applicant employs a land use attorney. He noted that one of the difficulties that the applicant had is that their attorney was not well acquainted with land use matters, and there have been delays in working out some of the complex land use issues. Mr. Germinario advised that if the amended application is postponed for two more weeks, it might ultimately save time in the long run if the applicant employs the services of a qualified land use attorney. Chairman Syme announced that this matter would be heard at the June 6, 2013 Planning Board meeting. Mr. Gardner advised that he would be prepared to proceed in two weeks, and that the applicant has a particular land use attorney in mind. Mayor Bettina Bieri observed that it was unfortunate that the applicant did not realize the need for a land use attorney prior to this. Board Member Chris Garcia inquired whether the stormwater could be directed to the wetlands and/or the buffer area. Mr. Hansen explained that with the most recent plan, the pipe would be installed on the other side of the driveway, across from the transition area, and that a DEP permit would be possible, but there would be no option to utilize wetlands for stormwater. Chairman Syme inquired whether the neighboring property owners, who were present at this meeting, had any comments, and the Zieglers, 82 Green Terrace Way, indicated that they had no comments.

**Motion** by Andrew Gargano, with a **second** by Councilman Luciano Signorino, to **approve** an extension for the Sun Young Joo Amended Major Soil Removal/Fill Permit application for two weeks to allow the applicant ample time to employ the services of a qualified land use attorney.

#### **Roll Call:**

**Yes:** Mayor Bettina Bieri, Steven Castronova, Christopher Garcia, Andrew Gargano, Councilman Luciano Signorino, Glenn Wenzel, Chairman Geoffrey Syme.

**No:** None.

**Abstain:** Robert Nolan

**Motion approved.**

## **PENDING APPLICATIONS**

### **TRIPLE T CONSTRUCTION, LLC**

#### **Preliminary & Final Site Plan With Bulk Variance #PB-03-11-01**

Block 6002; Lot 29

280 Marshall Hill Road; LMI Zone

**Re:** Status of Preliminary and Final Site Plan application.

Chairman Syme called the above matter before the Planning Board, Triple T Construction LLC Preliminary and Final Site Plan with Bulk Variance, and the applicant's new attorney, Robert Moshman, Esq., was present to address the Board. Mayor Bettina Bieri announced that she was recusing from this matter. Mr. Moshman advised the Board that, as new counsel for the applicant, he is aware that he is involved in a matter that has been going on for a long time, and that his client does have plans for the site, but they are not complete, and it made no sense to extend the time for a client who does not have a firm plan to work with. He stated that the best course of action at this time was to put this matter to rest. He noted that the boat and boat trailer storage portion of the site plan was approved by bifurcating the application in 2011. Mr. Moshman further stated that it was brought to his attention that the reason for the preliminary and final site plan application was to clear up zoning violations at the site from prior years. He advised that he received information regarding the site plan

application two days earlier in the form of a timeline prepared by the Board Secretary. With regard to zoning violations issued to the owner of the property, Scott Ridings, Mr. Moshman stated that Mr. Ridings maintains that he cleaned up the areas by moving vehicles that were the subject of the violations. Mr. Moshman then requested a 30-day extension of time from the Board so that he could research the matter to determine what zoning violations exist. With regard to the overdue escrow, Mr. Moshman submitted a check from his client in the amount of \$1300.00. Mr. Germinario advised Mr. Moshman that he is aware of at least one violation in the form of a tenant using the site for storage without Planning Board approval. If this is the case, Mr. Germinario stated, the applicant may have to evict the tenant or get site plan approval, and that it may not just be a matter of moving derelict vehicles. Mr. Moshman understood from his client that he has various storage locations for his own construction vehicles, and that is one of the reasons why Mr. Moshman needs additional time to review the files and address the issues with the Zoning Officer, Jim Lupo, so that the extent of the violations can be determined. Chairman Syme inquired if the \$1300.00 check for overdue escrow was sufficient to cover the past due invoices, and the Secretary was requested to put the amount in writing and send copies of any additional overdue invoices to Mr. Moshman to ascertain the final escrow required. Mr. Moshman concluded by restating his request for a 30-day extension, or until June 27, 2013, to provide time to review the files and address the violations, with the intention of returning to the Board to withdraw the application. Mr. Germinario advised that this request seemed reasonable, but noted that the applicant and his attorney may discover that the site plan may have to be kept open in order to address issues, which he was informed, exist on the subject site. Mr. Moshman responded that if it is determined that they need to return to the Board, the applicant will replenish the escrow account. Board Member Robert Nolan suggested that Mr. Moshman visit his client's site to see the condition of the property.

**Motion** made by Steven Castronova with a **second** by Robert Nolan to **approve** the adjournment of this matter for 30 days, or until the next Planning Board meeting on June 27, 2013.

**Roll Call:**

**Yes:** Steven Castronova, Christopher Garcia, Andrew Gargano, Robert Nolan, Councilman Luciano Signorino, Glenn Wenzel, Chairman Geoffrey Syme.

**No:** None.

**Motion approved.**

**MEMORIALIZATIONS** – None.

**NEW BUSINESS**

**Hydraulic Fracturing - Aquifer Testing** – Chairman Syme advised that Board Member Linda Connolly was not present at this meeting and had requested that the Board postpone their discussion regarding hydraulic fracturing on wells until the next meeting when she will be present. Board Engineer John Hansen advised that this was more of a hydrogeologic issue, but Chairman Syme stated that he did not feel entirely comfortable requesting Matt Mulhall of M2 to attend a meeting for a discussion on this matter until the issue had been clarified. Board Attorney Tom Germinario expressed his concern that this may not be a land use matter at all, but that the Board can discuss it at the next meeting, and if it is determined that it is within the Board's jurisdiction, Mr. Mulhall can be requested to attend a Board meeting. The Board concurred that a preliminary discussion of this matter would be postponed until the next regular meeting.

**ORDINANCES FOR INTRODUCTION** – None.

**ORDINANCES REFERRED FROM COUNCIL** - None.

**BOARD PLANNER'S REPORT** – None.

**MISCELLANEOUS**

**Approval Of Invoices – Board Professionals**

The invoices submitted by the Planning Board professionals for services performed during the month of February, March, and April 2013 were **unanimously approved** on a **motion** by Mayor Bettina Bieri with a **second** by Chris Garcia.

**Financial Disclosure Forms** - The Board Secretary advised that the NJ DCA Financial Disclosure Forms required for submission by all Planning Board Members and Board professionals were due by May 31, 2013.

**Streetscape Project** – Board Member Steven Castronova inquired about the progress of the streetscape project, and John Hansen advised that he would request an update from Paul Ferriero to present at the next regular Board meeting.

**Wallisch Site** – Board Member Chris Garcia expressed gratitude to the Township Council and several residents/contractors, including Eric Bos, Jack Levkovitz, and John Aiello, for repairing the roof on the Wallisch house, a local historic landmark on Lincoln Avenue. Mayor Bieri noted that someone attended a recent Town Council meeting and offered to install a security system at the site.

## **MINUTES**

The Minutes from the January 3, 2013 and February 7, 2013 Regular meetings were **approved** on a **motion** by Councilman Luciano Signorino with a **second** by Steven Castronova. Robert Nolan and Glenn Wenzel abstained.

***The following documents/correspondence were reviewed by the Board and filed:***

### **Highlands Water Protection And Planning Act Correspondence**

1. Responding to an NJDEP letter of March 8, 2013, a revised plan/survey submission for a Highlands Applicability and Water Quality Management Plan Determination, dated April 11, 2013, from Twins Realty Group LLC, 937 & 943 Burnt Meadow Road, Block 3906, Lots 9 & 10; Block 6002, Lot 39.01, including survey dated April 9, 2013 with site conditions indicated as of August 10, 2004, and confirmation from the Township of West Milford, dated April 10, 2013, confirming the site conditions as of August 10, 2004 as depicted on the survey.
2. Highlands Act – Exemption #4, Water Quality Management Plan–Not Addressed, dated April 12, 2103, received for Verizon Wireless – Ringwood 4 (Westbrook), Block 4701; Lot 61, 750 Westbrook Road, regarding the installation of a 40 ft x 70 ft wireless telecommunication compound including a 120 ft tall monopole supporting a total of 12 wireless antennas on 131.9 acre property.
3. Highlands Act – Exemption #2, WQMP – Consistent, dated April 18, 2013, received fro Lobosco Single Family Home, Vine Avenue & Ridge Road, Block 5603; Lots 2.01 and 2.02, for the construction of a four bedroom single family dwelling on a .46 acre site. No additional impervious surfaces such as sheds, pools, decks, or additions, and no disturbance may occur that would cause this site to meet or exceed the ¼ acre of impervious surface.
4. Highlands Area Delegated Exemption Certification Program, April 25 and May 1, 2013, applicable for municipalities who have approved petitions for Highlands Plan Conformance, with certification for issuing local exemption #1, 2, 4, 5, 6, 7, and 8.

### **NJ Department of Environmental Protection Correspondence**

1. Notification from John Moyle of the NJDEP, Bureau of Dam Safety, dated April 4, 2013, to Allison Hosford, Weaver Road, advising that the Zeliff Pond Dam, NJDEP Dam File # 22-76, was determined to be in Satisfactory Condition based on the report submitted by Richard Deubert, P.E., and further advising that the dam will be reclassified as a Class III, low hazard dam.
2. Notification from John Moyle of the NJDEP, Bureau of Dam Safety, dated March 19, 2013, to Lindy's Lake Association, advising that Lindy's Lake Dam, NJDEP File # 22-54, was repaired in accordance with the approved plans, but request revised as-built plans to be submitted by May 31, 2013, in addition to other repairs to the dam outlined in the NJDEP letter of November 4, 2011. The next regular inspection is due by July 2013.
3. Notification from John Moyle, NJDEP Bureau of Dam Safety, dated April 16, 2013, to Camp Vacamas, 256 Macopin Road, regarding the Henion Pond Dam, NJDEP File # 22-18, advising that, in response to a request from Civil Dynamics dated April 2, 2013, a 6" increase in the lake level during the summer season is approved and they will permit the installation of one, 6" high stoplog in each spillway section for the period of March 27, 2013 to August 31, 2013 provided that all the conditions outlined in the letter from Civil Dynamics are met. The Bureau may rescind the approval to raise the lake level if there is any indication of instability or deterioration of the embankment or spillway.
4. Correspondence from John Moyle, NJDEP Bureau of Dam Safety, dated April 5, 2013, to the City of Newark, Department of Water and Sewer Utilities, regarding Pequannock Watershed Dams and the 2011 Formal and 2012 Regular Inspection Reports for Canistear Reservoir Dam Nos. 1 & 2, Charlotteburg Dam, River Wall Dam, Clinton Reservoir Dam, and Oak Ridge Reservoir Dam, advising that a review of the 2011 Formal Inspection Reports from Civil Dynamics found the dams to be in fair condition with maintenance repairs and studies necessary, but noting that more details were needed regarding a No. 2 cone valve in the sluice gate for the Charlotteburg Dam. Also noted by the NJDEP were numerous immediate and long-term recommendations from prior reports that have not been addressed. With regard to the 2012 Regular Inspection Reports, NJDEP records indicate that the 2012 dam safety visual inspection reports were overdue. Additional comments note that inspections have been completed in winter months which are not permitted under NJAC 7:20-1:11(f) or they were conducted a year after they were due and not submitted in a timely manner; enforcement action is warranted and may be taken by the NJDEP if the matters are not addressed. The 2012 dam safety inspection reports for the above referenced dams must be submitted by May 31, 2013 and the 2013 inspections must be completed prior to November 2013, with a report filed within 30 days of the inspections.
5. No Further Action, Covenant Not To Sue, dated April 5, 2013, received from the NJDEP, regarding 28 Hewitt Road, Block 1903; Lot 2, for Edward Pevny, related to the removal of one 275 gal #2 heating oil AST.
6. Notice from Careaga Engineering Inc., dated April 8, 2013, regarding Surjit Singh, 555 Warwick Tpk., Block 703; Lot 3, advising that a Treatment Works Approval (TWA) application is being submitted to the NJDEP for the abandonment of a septic disposal system and replacement with a new tank, pre-treatment tank, and a chambered disposal bed for a proposed gas station convenience store.

7. Private Potable Well Water Analysis from the NJDEP, dated April 24, 2013 received for GPS Enterprises, 551 Warwick Tpk, Block 703; Lot 3, advising that water obtained from the well tested on January 23, 2013 was found to be acceptable for drinking water and other domestic uses.
8. Copy of an application for a GP 25 received on April 16, 2013 for Katie Beier, 18 Crescent Road, Block 12305; Lot 13 for the repair of a malfunctioning septic system.
9. Notice of an On Scene Coordinator Residential Discharge Authorization Approval from the NJDEP, dated April 19, 2013, to Gerald Struble and Andrew Allen, regarding 305 Germantown Road, Block 14202; Lot 3, with respect to the emergency discharge of treated ground water to a storm sewer, outlining the procedures to be followed with regard to the construction and operation for a ground water recovery and treatment system.
10. Freshwater Wetlands Individual Permit and flood Hazard Area Individual Permit – Modification No. 2, dated March 27, 2013, received for Tennessee Gas Pipeline from the NJDEP – Land Use Div., with a change to condition #55 requiring the applicant to only use non-petroleum based hydraulic fluids in equipment in connection to the Monksville Reservoir HDD crossing. If this is determined to be impractical, the contractor shall install a secondary containment around the operating equipment, as well as impermeable material to be placed under and around all equipment, with an inspector to be on site at all times to monitor for spills and leakage.
11. Notice from the NJ DEP Natural and Historic Resources, dated May 1, 2013, advising that Michael Friedman of Vacamas Programs for Youth, 256 Macopin Road, has been awarded a loan in the amount of up to \$1,165,000.00 for the repair of the Henion Pond Dam (NJ File No. 22-18).
12. Notice to the Township of West Milford, dated May 7, 2013, from the NJDEP Bureau of Dam Safety & Flood Control, advising that the State is unable to offer any funding assistance at this time from the Dam Restoration and Inland Water Projects Loan Program for the repair of the Bubbling Springs Lower Pond Dam (NJ File No. 22-320) and advising that the Township should continue efforts to bring the dam into compliance with the Dam Safety Standards.
13. Notice to Tom McNair, Farmcrest Acres Association, Inc., dated May 7, 2013, from the NJDEP Bureau of Dam Safety & Flood Control, advising that the State is unable to offer any funding assistance at this time from the Dam Restoration and Inland Water Projects Loan Program for the repair of the Lower Crest Lake Dam (NJ File No. 22-334) and advising that Farmcrest Acres Association should continue efforts to bring the dam into compliance with the Dam Safety Standards.
14. Notice to Tom McNair, Farmcrest Acres Association, Inc., dated May 7, 2013, from the NJDEP Bureau of Dam Safety & Flood Control, advising that the State is unable to offer any funding assistance at this time from the Dam Restoration and Inland Water Projects Loan Program for the repair of the Upper Crest Lake Dam (NJ File No. 22-333) and advising that Farmcrest Acres Association should continue efforts to bring the dam into compliance with the Dam Safety Standards.

#### **MISCELLANEOUS CORRESPONDENCE**

1. Correspondence received from Sean Thompson, Acting Director of COAH, dated May 1, 2013, to the Township of West Milford regarding the Municipal Affordable Housing Trust Fund Current Balance, advising that their records indicate that the Township had not committed or expended the affordable housing funds by March 31, 2013, and requested certification and documentation that the funds have been committed in a manner consistent with the municipality's fair share plan, the Fair Housing Act, an approved Spending Plan, and all applicable regulations.
2. Notice from the HEPSCD dated April 19, 2013 advising that the Joo Fill & Grade Project Revised Plans for Grading and Drainage have been approved and their soil erosion and sediment plan remains certified.
3. Notice from the HEPSCD dated April 1, 2013 advising that the First, Second and Third Avenue Improvements plan by the Township of West Milford has been certified for 3.5 years.
4. Notice from the Passaic County Freeholders and Division of Economic Development regarding a free seminar on "Greening Your company in 2013: Opportunities to Improve Cashflow and Maximize Environmental Benefits" on June 19, 2013 at William Paterson University – registration required. Passaic County will also award certificates to municipalities/companies organizations in Passaic County who have implemented green design concepts and techniques including recycling, alternative green power, green new or rehab construction. Contact Deborah Hoffman, Dept of Planning & Economic Development at 973-569-4725.

#### **ADJOURNMENT**

With no further business to come before the Planning Board, a **motion** was made to **adjourn** the Regular Meeting of May 23, 2013 at **9:05 p.m.** by Robert Nolan with a **second** by Councilman Lou Signorino.

Approved: August 22, 2013

Respectfully submitted by,

Tonya E. Cubby, Secretary