

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

May 27, 2010

Regular Meeting

The Regular Meeting of the Planning Board was opened at 7:34pm 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, Douglas Ott, Geoffrey Syme, Councilman Philip Weisbecker, Michael Siesta, Chairman Andrew Gargano, Board Planner Charles McGroarty, P.P.,

Absent: Christopher Garcia, Thomas Harraka, Richard McFadden, Board Attorney Thomas Germinario, Esq., Board Engineer Paul Ferriero, P.E.

Chairman Gargano announced that effective June 1, 2010, Planning Board member and Township Engineer Richard McFadden, P.E., is resigning from his position with the Planning Board due to his impending retirement on July 1, 2010.

PUBLIC PORTION

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

Doris Aaronson – Bearfort Road – Ms. Aaronson inquired about the status of the Highlands Grant for a Water Use Study that she had provided to Paul Ferriero, Board Engineer. Mr. McGroarty, Board Planner, replied that West Milford was one of the pilot towns for the study, but as far as he knew, no money has been allocated for this, to date, and he was not sure when the funding would be available. Chairman Gargano requested that the Board Secretary send an email to Mr. Ferriero to inquire about the status of this grant.

Don Partington – Snake Den Road - Mr. Partington addressed the Planning Board about a wind turbine that he had purchased in 1992, stating that he had been denied a permit to construct an 80-foot tower for the turbine. He learned about the recent draft proposed wind energy ordinance that had been formulated by the Board, and was present at this meeting to request the Board to consider making the requirements less restrictive so that applicants would not be required to get variance approval to construct the turbines. He advised that the State of New Jersey encourages alternative energy use and that electric utility companies dedicate a small portion of residents' electric bills for alternative energy. He noted that his windmill (10 kilowatt Bergey) would be about 80 – 100 feet high. Board member Steven Castronova inquired if the turbines made noise while operating, and Mr. Partington replied that they do make noise, but the noise is audible mainly at night and in the winter. He added that in a wooded area the noise might not be that noticeable. Mr. Partington stated that he had 4 acres of land and wanted to construct the tower on top of a ridge that would get sufficient wind speeds. Chairman Gargano inquired if Mr. Partington had an opportunity to see the Board's draft wind energy ordinance, to which Mr. Partington replied that he had not. Mr. McGroarty advised that he had sent the ordinance to the Township's Attorney for preparation of an ordinance for the Township Council. He observed that, per the Planning Board's recommendation, the wind turbines will not be permitted in residential areas. Mr. Partington replied that the ordinance should allow turbines in residential zones, adding that the energy credits available from the government are for residential sites. He spoke to the Board about the various wind zones, noting that he had a "4-zone" at the site where he proposed to install his tower. He requested that the Board consider administrative approval instead of requiring a variance with the Board of Adjustment. He stated that the setback requirements in the sample ordinance of 1½ times the height of the tower were restrictive. Mr. McGroarty advised that the state legislature adopted a law that sets the parameters, and a municipal ordinance cannot impose setbacks that are in conflict with the State's. He did not have the cell tower ordinance with him, so he could not comment on their setbacks. Mr. Castronova inquired about the actual Board of Adjustment denial Mr. Partington received 18 years earlier, and Mr. Partington acknowledged that he had not made application to the Board, but was advised that he could not install the wind turbine tower, and that there was no ordinance in place at the time. The Chairman inquired if a copy of the proposed draft ordinance was available for Mr. Partington, and the Secretary provided him with a copy. Michael Siesta inquired about the typical payback for the unit, and Mr. Partington noted that the cost is typically \$40,000 - \$50,000, but the machines were built to last a long time, require little maintenance, and produce more electricity than solar. Mr. Partington estimated that with a 10 kilowatt unit, he would most likely not get an invoice for electricity use due to the additional credits he will receive from the banked power. He noted that rebates for wind turbines are usually only about \$13,000, so they are expensive to install, and adding the cost of a variance application may make it cost prohibitive for the average homeowner. He again requested the Board to consider allowing administrative review for residential users when the ordinance is referred back from the Council.

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

PRESENTATIONS

Draft Housing Element & Fair Share Plan – Public Hearing

Chuck McGroarty, P.P., reviewed the Township of West Milford's Draft Housing Element and Fair Share Plan, advising that a legal notice of this hearing had been published and Passaic County had received a copy of the draft plan from his office. He noted that while there are changes on the horizon for COAH, it was in the Township's best interest to comply with the rules established at this time. It is anticipated that the housing obligations may be reported in a different manner than they currently are, but affordable housing obligations will still exist. He noted the June 8, 2010 deadline that had been extended several times previously due to the Highland's Master Plan. He explained that this housing element is a requirement of the Highlands Plan conformance. He confirmed that copies had been provided to the Planning Board members for review. He brought attention to the glossary that he included in the document for ease of reference. Mr. McGroarty advised that much of the data he used was from the 2000 Census. He reviewed the Fair Share Plan, explaining that it was established after COAH. Following his research, Mr. McGroarty advised that with the existing inventory and credits, the Township has met its third round obligation. The methodology for arriving at the figures needed for this report was outlined in the document. He commented on the new law that is being discussed and implied that the prior rounds may be eliminated, which would result in 73 credits for future obligations. Mr. McGroarty reviewed the third round obligation and the growth share, or new construction, which totals 47 units. He added that we currently have 14 units towards the 47 units, so an estimated 33 units will be needed. To meet that obligation, he suggested the Township apply for 2 accessory apartment units, deed restricted, subsidized by the Township in the amount of \$20,000 to \$25,000. The Housing Trust Fund currently has approximately \$50,000, so the two units would utilize the bulk of these funds, unless we receive more fees from other developments. Mr. McGroarty also recommended the Township use a few lots from its vast supplies of Township-owned land to build duplexes for the low and moderate housing, noting that he has identified several lots that would most likely receive approval from the Highlands Council. If the Township determines that the accessory apartments are acceptable, a resolution will be adopted by the Council. He advised that he tried to create a plan that will not incur additional costs to the Township. He reviewed the rehabilitation units and commented that the Township was able to include all the rehab units from April 1, 2000 to the present, but added that we would need 46 additional units. Mr. McGroarty stated that he will reach out to Passaic County to determine if they have monies available for the housing rehab program, and he will also notify COAH that our rehabilitation obligation will go through the County. He advised that if the Board approves, a resolution could be adopted and the Housing Element plan would then go to the Township Council, along with the Spending Plan.

Chairman Gargano opened the meeting to the public. The following addressed the Planning Board regarding this matter:

Doris Aaronson, 19 Bearfort Road – Inquired whether the plan could be changed after the Council approves it and it is submitted. Mr. McGroarty replied that the plan could be changed at any time, adding that if the new legislation is adopted and we have a plan that works against us we can amend it. Ms. Aaronson inquired about the prior round obligations and whether they were tied to the new units that were built market value, and Mr. McGroarty replied that the first 2 rounds had no relation to local growth, that a number was assigned to each community and they had to work within those numbers. He further explained that the third round rules changed 3 times, and currently the requirement is 1 COAH unit for every 5 units built market value. He also noted that COAH is very sensitive to the types of non-residential units built, with a conversion rate applied. Ms. Aaronson then asked about the COAH formula as it relates to the age of the building, and who would be responsible for the rehab units. Mr. McGroarty advised that units will be purchased, and the County would administer the rehab program, but it would be monitored by the Township. The occupants and/or homeowner would have to qualify as low income. These units will be included in the plan so that we receive credit. Mr. McGroarty advised that he will attempt to get in touch with the County to ascertain the programs and funds they have available. Ms. Aaronson commented that there may be properties that qualify and suggested we advertise the information. Mr. McGroarty also advised that there were several groups who were willing to work with the Township to build group housing on the Township's vacant land. Ms. Aaronson expressed concern over the inadequate water supplies for additional housing.

Following the discussion, a **motion** was made by Councilman Philip Weisbecker with a **second** by Douglas Ott to close the public portion.

Councilman Weisbecker inquired about several lots in the plan and whether they were designated as open space or green acres, and also commented that COAH and Green Acres were not pleased that Random Woods property was purchased without their approval. Geoffrey Syme inquired about the Rehab program. Steven Castronova asked for clarification on what constituted rehabilitation, and Mr. McGroarty replied that system overhauls would be an example, including new boilers and septic systems. With no further comments or inquiries from the Planning Board, Chairman Gargano asked for a motion to approve Resolution No. 2010 – 07.

RESOLUTION NO. 2010 - 07

A RESOLUTION OF THE TOWNSHIP OF WEST MILFORD PLANNING BOARD ADOPTING THE HOUSING ELEMENT AND FAIR SHARE PLAN

Motion by Douglas Ott with a **second** by Councilman Philip Weisbecker to approve Resolution #2010 – 07. The resolution was **approved** by a roll call vote of the members in attendance at that meeting.

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

Mr. McGroarty distributed copies of the Spending Plan that must be approved by the Township Council. He reviewed the plan with the Board members noting that the plan follows the format the COAH created. He explained that the plan shows how the Township intends to spend the funds in the Housing Trust Fund within 4 years of certification or the money would revert to the State of New Jersey. He reviewed the anticipated revenues, which will be nominal, and applied the formula, and by 2018 all the funds would be used. He noted that the Township is not bound by the spending plan, and it can be amended. He stressed that any new development that is built must comply with affordable housing, and explained that new homes will have to contribute a 1% development fee, 1/2% due when a permit is issued and 1/2% due when a C.O. is granted. Mr. McGroarty advised that this spending plan must be presented to the Township Council and approved prior to submission.

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

Mr. McGroarty advised that the draft wind turbine ordinance was sent to Fred Semrau, Township Attorney, to be prepared into a final ordinance, and will be reviewed by the Township Council. He noted that there were 3 non-residential zones where the turbines would be permitted, he removed the photo simulation site plan requirement, and referenced that minor site plan requirements would apply to these applications.

Draft Sign Ordinance

Mr. McGroarty advised that he had reviewed the [draft sign ordinance] matter numerous times trying to establish criteria that will work well in all the zones, while trying to avoid increased signage. He looked forward to sharing some dialogue with the Chamber of Commerce and other business owners at the next Planning Board meeting.

PLANNER’S REPORT

Mr. McGroarty advised the Planning Board that a Master Plan Re-Examination Report should be prepared. He noted that a brief version of the Master Plan can be compiled, but some time will be needed to devote to the various issues that must be addressed, including solar and wind energy. Chairman Gargano suggested a meeting be arranged with the Master Plan Subcommittee.

MISCELLANEOUS

Time of Decision Rule – Zone Changes

Mr. McGroarty summarized the recent Time of Decision legislation for the Planning Board, noting that the zoning cannot be changed after an application is submitted, and that the zoning applies at the time of submission. He recommended that the Board carefully review their zoning. On a similar matter, he advised that he and Fred Semrau are currently working on rezoning the area that includes the former Valley Ridge site, and suggested that the town center zoning be revised. Chairman Gargano noted the recent Zoning Board of Adjustment Annual Report and the request for revisions to the Lake Residential zone, adding that the BOA have repeatedly requested the Planning Board to review the LR zoning and he felt it needed to be addressed.

Resignation of Township Engineer

Chairman Gargano read the letter of resignation from the Planning Board from Rich McFadden due to his impending retirement. Chairman Gargano noted that he was on the Township Council when Mr. McFadden was hired and stated that he has done an incredible job during his tenure with the Township, and he will be missed.

Approval Of Invoices – Board Professionals

The invoices submitted by the Planning Board professionals depicted for the May report that was provided to the Planning Board were **unanimously approved** by the Board on a **motion** by Douglas

Ott with a **second** by Steven Castronova. Michael Siesta inquired about the "OTHER" column on the applicant's escrow spreadsheet. The Secretary will inquire about this with the Land Use Administrator and report back to the Board.

MINUTES

Motion by Councilman Philip Weisbecker with a **second** by Steven Castronova to approve the minutes of the April 22, 2010 Regular Meeting with a correction on page 4 to note "the formerly proposed town center area." The minutes were **unanimously approved, as amended** by the members in attendance at the meeting.

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

COMMUNICATIONS

1. Mayors Fax Advisory dated May 5, 2010 regarding the Elimination of the Time of Decision Law regarding land use applications in NJ.
2. Notice from PSE&G that brush mowing as part of their vegetation management work on the PSE&G easement will begin on or about August 2010.
3. Certification of a Soil Erosion and Sediment Control Plan, dated April 23, 2010, received from the HEPSCD for James Goble, 18 Apple Lane, Block 14113; Lot 47.

HIGHLANDS WATER PROTECTION & PLANNING ACT/NJ DEP CORRESPONDENCE

1. Notice of Authorization dated May 11, 2010 for Freshwater Wetlands G.P. #25 and Waiver of Transition Area for Access for Raymond Spellman, 418 Morsetown Road, Block 6001; Lot 7 regarding repair or alteration of malfunctioning individual subsurface sewage disposal system.
2. Copy of application to the NJDEP received May 14, 2010 from Joseph and Mary Ragonese, 8 Hickory Avenue, Block 6002; Lot 10 regarding an application for a GP #25 for a septic alteration with no expansion or change in use.
3. Copy of an application for a Highlands Applicability Determination, received May 13, 2010 from McKittrick Engineering, regarding Cefes Financial, Inc. (Harold Smith) for the construction of a single family dwelling on Block 16504; Lot 4, Apple Tree Lane/Dan Jennings Road.
4. Copy of an application for a Highlands Applicability Determination, received May 13, 2010 from McKittrick Engineering, regarding Cefes Financial, Inc. (Harold Smith) for the construction of a single family dwelling on Block 1806; Lot 4, Magnolia Road.
5. Flood Hazard Area Applicability Determination, dated May 11, 2010, received for Jeff Nackowitz / Theresa LaCava for Block 3005; Lot 1 – no written flood area approval is required for replacement of the subsurface sewage disposal system.
6. Notice of Administrative Completeness for Highlands Applicability and WQMP Consistency Determination, dated May 10, 2010, received from the NJDEP for Lipari Property, Block 5306; Lot 4.02, Split Rock Road.
7. No Further Action and Covenant Not To Sue Letter dated May 17, 2010 received from the NJDEP for Alaina Scala, 3 crest lake Drive, Block 16701; Lot 8 regarding removal of a 550 gallon #2 Fuel Oil Underground Storage Tank and associated contaminated soils.
8. Highlands Exemption #4 and WQMP–Consistent – dated May 7, 2010, received for Michael VanderPloeg, Shoebox Storage, LLC, Block 16006; Lot 1.01, 140 Oak Ridge Road, regarding the demolition of existing buildings, several accessory buildings and several impervious pads and paths associated with Fairy Tale Forest, and construct a new multi-use building that will include commercial use and residential apartments and storage facilities, with new parking and loading area and new septic.
9. Authorization dated April 27, 2010 for a Freshwater Wetlands GP #25 and Waiver of Transition Area for Access for Yoram Rosen, Block 4901; Lot 15, 64 Kitchell Lake Drive, regarding an on-site wastewater treatment system.
10. Authorization dated April 27, 2010 for a Freshwater Wetlands GP #25 and Waiver of Transition Area for Access for Jeff Nachowitz and Theresa LaCava, Block 3005; Lot 1, 47 Dogwood Lane, for installation of a Peat & Drip Disposal System.
11. Notice from McKittrick Engineering Associates, dated May 7, 2010, regarding the anticipated application for a NJDEP TWA-Treatment Works Approval for construction of a new septic system, Block 15803; Lot 4, at 4 Oak Ridge Road.
12. Notice of Administrative Completeness for Highlands Applicability and WQMP Consistency Determination, dated April 28, 2010, received for Michael Zupp, Block 12110; Lot 6; 9 Martha Street for the construction of a new single family dwelling.
13. Application copy received on April 23, 2010 regarding a GP #25 for installation of a new septic system at Block 7005; Lot 4; 6 Glencross Road, for Robert Michaud.
14. Copy of an application to the NJDEP for a GP #25 regarding installation of a new septic system with no expansion or change in use for Andrzej Soljan, Block 8509; Lot 8, 65 Dockerty Hollow Road.
15. NJDEP Child Care Facility Approval Letter, dated April 30, 2010, received for Omni Day School, Block 7702; Lot 7.
16. Follow up Notice of Violation, File #1615-09-0016.1, dated April 30, 2010, received for Kenneth and Lisa Perry, 93 Morsetown Road, Block 5001; Lot 4, for failure to take certain actions to comply with the Freshwater Wetlands Protection Act which required submission of a plan to restore the disturbed area or application for a permit to allow the disturbance.

17. Notice dated April 21, 2010 from the NJDEP that the Application Status for a WQMP for David Koblitz, 225 Ridge Road, Block 8704; Lot 26 was Cancelled for failure to submit required information outlined in the October 19, 2009 Letter of Technical Incompleteness.

18. Agency Determination–Highlands Act–Not Major Highlands Development; WQMP–Consistent, dated April 15, 2010, received for George DeGraw, Brookside Development, LLC for Block 14601; Lot 5 (5.01 & 5.02); 121 Union Valley Road, regarding a proposed minor subdivision.

19. Agency Determination–Highlands Act–Not Major Highlands Development; WQMP–Consistent, dated April 15, 2010, received for George DeGraw, Brookside Development, LLC for Block 14601; Lot 6 (5.03 & 5.04); 121 Union Valley Road, regarding a proposed minor subdivision.

ADJOURNMENT

With no further business to come before the Board, the Planning Board Regular Meeting of April 22, 2010 **adjourned** at **9:40pm** on a **motion** by Councilman Philip Weisbecker with a **second** by Steven Castronova.

Approved: July 22, 2010

Respectfully submitted by,

Tonya E. Cubby, Secretary