

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

June 6, 2013

Regular Meeting

The Regular Meeting of the West Milford Planning Board was opened at **7:31 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, Linda Connolly, Christopher Garcia, Andrew Gargano, Robert Nolan, Douglas Ott, Michael Siesta, Councilman Luciano Signorino, Glenn Wenzel, Alternate Steven Castronova, Chairman Geoffrey Syme, Board Attorney Thomas Germinario, Board Engineer Paul Ferriero, P.E.

Absent: Board Planner Chuck McGroarty, P.P.

Chairman Geoffrey Syme noted that there was a quorum present for this Regular Meeting.

PUBLIC PORTION

Chairman Syme opened the Public Portion of the meeting. There was no one present to address the Planning Board on any matter of concern. The Public Portion was **closed** by unanimous consent on a **motion** by Mayor Bettina Bieri, with a **second** by Robert Nolan.

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 approvals memorialized by Resolution No. 2013-7 and Resolution 2013-10 for the prior re-grading of an existing 4-acre residential site.

Chairman Syme announced the Sun Young Joo Major Soil Removal/Fill Permit matter, and James Lott, Esq. of Riker, Danzig, Sherer, Hyland & Perretti of Morristown, NJ, advised that he was representing the applicant, Sun Young Joo, in this matter. He stated that he met with his client the week prior to this meeting and was just retained within the past two days, and requested that the Planning Board adjourn the hearing until he has had time to thoroughly review the matter. Board Attorney Tom Germinario advised that he understood Mr. Lott's position, and questioned why the applicant waited until two days before the hearing to retain his firm. He further noted that the applicant's engineer, Gerald Gardner of Houser Engineering, testified at the May 23, 2013 Planning Board meeting that they would be prepared to proceed at this meeting with a new attorney. Board Member Andrew Gargano inquired about the prior attorney, and Mr. Lott replied that Mr. Kim was still co-counsel for this matter. Mr. Germinario advised the Board that Mr. Kim was an excellent attorney, but his expertise in land use was limited, while Mr. Lott's expertise is land use issues, which will help with this matter. Mr. Gargano inquired why the project had not begun since it was scheduled to commence in January, and he expressed frustration that this matter has continued for so long. Mr. Lott responded that, based upon his preliminary review, the first issue is that when the Board granted an amended major soil permit approval in April, and his client agreed to the plan and wanted to proceed, it was determined that a NJDEP permit would be required before the project could begin. Mr. Gargano countered that there were other options, including building a detention/retention basin on the applicant's property. Mr. Lott noted that it was a matter of what their obligations were. Mr. Gargano suggested another option that had been proposed which would put the drainage pipe on the Witherspoon property at 70 Green Terrace Way, and wondered why this project was prevented from moving forward. Mr. Lott advised that consent was required from other property owners, delaying the project. Mr. Germinario noted that there was an easement agreement with the property owner at 82 Green Terrace Way, but after this was executed, it was determined that a NJDEP waiver was required, and there was no guarantee that the waiver would be granted. He also noted that there were conservation easements that are required and would need to be defined. Mr. Lott confirmed that if a waiver from the NJDEP was required, it might be a delay of another 90 days or more. Mr. Gargano stated that there was a property owner who has had issues with flooding, and this is an urgent matter, with 4 more inches of rain forecasted for the following day. Mr. Germinario advised the Board that they could permit the applicant's professionals to proceed as far as they are able to, with the hearing suspended and carried when the applicant's professionals need to review the files before continuing. The Board concurred with Mr. Germinario that the testimony should continue.

Mr. Lott advised the Board that he intended to air the concerns of the Board and the applicant, and to provide evidence that there has been no "foot dragging" on the part of the applicant. He expressed concern about the noticing requirements, noting that the adjacent property owners had not received notices for a hearing. Mr. Germinario advised Mr. Lott that the hearing was being held pursuant to the last amendment, before formal action was taken, and Mr. Lott countered that the Board had already taken action and the applicant was prepared to proceed. He further stated that the testimony presented at this meeting was not part of a hearing, and he deferred to case law on the matter.

Mr. Germinario noted that neighboring property owners, the Ziegler's, have not provided comment as to their position in this matter. Mr. Carl Kirk Ziegler, 82 Green Terrace Way, requested to address the Board, expressing annoyance at the statements of the applicant's attorney regarding the delays in the project and his implication that Mr. and Mrs. Joo were not responsible for the flood damage and erosion that has

occurred. He further noted that he is involved in these matters daily as an engineer for contaminated sediment sites, and posed the question about who would be responsible to take the risk for this project. Mr. Ziegler noted that the design that was prepared by the applicant's engineer was for a 25-year flood event, and it has been confirmed that the proposed pipe would not handle anything that exceeds this amount. He advised the Board that without detention basins on the Joo's property, there will be a risk for flooding, and he provided an analysis of the risks for flood events, stating that a risk ratio of 1 to 100,000 was all that was acceptable. Mr. Ziegler noted that there had been no communication with the Joo's regarding this matter, and he stated that the Witherspoons had been cooperative, but the delays lie with the Joo's and their engineering firm for failure to identify the wetlands that his research had confirmed. He maintained that he did not intend to delay or impede the project and want the pain and suffering experienced by the neighbors to be alleviated. With regard to the projected route for a drainage pipe, he inquired what the position would be for the applicant to apply to the NJDEP for wetlands permit. Mr. Ziegler noted that an emergency permit would not be acceptable and he recounted his experience with emergency permits that may get approval but mitigation may have to be completed at another site and there would be liability involved for the Joo's. Mr. Ziegler suggested that the DEP permit could be applied for and he would have no problem with granting the easement, but there was no guarantee regarding the liability for the Joo's. Mr. Germinario commented that an agreement could be drawn up between the Joo's and the Ziegler's, and Mr. Ziegler responded that he would have to speak to his attorney on this.

Scott Witherspoon, 70 Green Terrace Way, addressed the Board, noting that he had been attending the Township Council meetings since June 2011 and the Planning Board meetings since October 2012. With the project originally approved in January, and modified in March, he assumed that the project would have been completed by this time. Mr. Witherspoon recounted that many of the Council members, the Mayor, and Township staff had been to his property during storm periods, and that he was not trying to transfer his problem to another property owner. He expressed his frustration that the applicant's engineer, Gerald Gardner, had not prepared plans to have the stormwater drain into a pipe on his property and he would agree to the easement as discussed at prior Planning Board meetings, but no one has been to his property, and he was out of patience. Mr. Witherspoon stated that when he recently removed his pool cover, he discovered that the liner had been torn and fallen down, and it was not being covered by his insurance company since they view this as a drainage issue between the Township and the Joo's. He continued to advise the Board that the estimate for repair of the damage this year was \$9,000., as well as making this the third summer that he could not use his pool. He advised that he is agreeable to an easement on his property provided that an acceptable plan for the anticipated flow can be prepared and the details would have to be clarified with regard to construction and maintenance. Mr. Witherspoon stated that he had not retained an attorney to date, but the actions of the Board at this meeting will determine his decision to retain one, and he requested that the Board address this problem once and for all.

Mr. Lott noted to the Board that it appeared that the two neighbors who addressed their concerns seemed to have different remedial plans, but the original plan that was presented was to drain into the public right of way, which is what his client prefers. If the drainage is directed to the ROW, Mr. Lott maintained that it will alleviate the problems, and although he understands that there were objections to this option, he stated that his client could not rebuild the entire infrastructure in West Milford. With regard to Board Member Andrew Gargano's suggestion that the Joo's handle the storm water at their own site, he stated that this would not be the best solution for the rest of the neighborhood.

Board Engineer Paul Ferriero advised the Board that there was more than one solution to the problem and there were several options available, but it was not the Board's obligation to design the plan that would solve the problems. He continued to note that there were concerns with each of the options, and while there is merit to putting the drainage in the public ROW, there were also issues associated with this. With regard to directing the drainage into a pipe on the Witherspoon property, this would be a more direct line of flow and, from a hydrologic standpoint, it was a better choice, but there was not enough information to consider this plan. He observed that the applicant seemed to prefer having the drainage in the public ROW, but the issues for the Zieglers were concerns about damage to their driveway and whether there would be modifications to the pipe for greater flow. Mr. Germinario noted that an easement exists, but not for the pipe augmentation proposed, and suggested that the best option may be onsite detention on the Joo's property with possible supplementary work to address the Witherspoon property. Mr. Ferriero recollected that there was not a problem before the soil movement and other work on the Joo's property, and the Board could require the applicant to return the site to the prior hydrologic conditions, although there was no guarantee with this option. Chairman Syme remarked that flooding was not an issue before all the trees were removed, and the neighboring property owners testified to this.

Mr. Ziegler addressed the Board regarding Option A, which would put a manhole in the middle of their driveway, and stated that their concern was that the system was designed for a 25-year flood level and anything exceeding this would result in water flowing down their driveway. He further stated that if the drainage could be designed for a 100-year flood event without discharge and flow from the manhole, and an agreement on landscaping and aesthetics was reached, they would be amenable. Mr. Lott interjected that his client's plan for a detention basin could handle a 100-year flood event, but that they could not fix defects in the public system. Mr. Ziegler countered that the original design and other plans did not include a detention pond on the Joo's property, but since capacity is the issue, it could possibly be designed for a carrying capacity of a 100-year flood, with a detention pond to mitigate the flow as an acceptable alternative. Mr. Germinario inquired about Mr. Lott's statement regarding a deficiency in the Township storm drain system, and whether the system is currently carrying the flow, and Mr. Ferriero responded that he was not aware of an issue between the Witherspoon and the Ziegler properties, but the hydrologic rates would have to be analyzed. He noted that it was crucial that the inlet condition is working so that the water leaving the

Joo's property gets into the pipe, and if the inlet condition is affected by changes in surrounding properties, as with the Joo's, it will not flow.

Mr. Lott advised the Board that if they desire his client to install an onsite pond, they will comply, but it will not be an optimal situation for the neighborhood. He further stated that there were unprecedented storms during the past several years and the site work on his client's property may have aggravated the problems, but he could not conclude that the work caused the problems. Mayor Bieri remarked that it was disheartening that the applicant failed to realize that he required someone with the proper expertise for this matter after months of trying to address this. She further stated that the issues are engineering and the urgency has been acknowledged, but it was assumed that the applicant would hire another qualified professional. With regard to Mr. Lott's assertion that he was not familiar with the file on this matter, Mayor Bieri noted that he has made several statements that proved he was well versed with the issues, and that he was obligated to mitigate the consequences of his client's actions. She continued, observing that prior to the applicant's site work, there were floods in many areas of the Township, but never any damage in this location before this. With regard to making an application to the DEP, Mayor Bieri stated that this was not an option due to time constraints, and noted that the applicant's professionals should have been aware of the DEP issues before submitting the plans. She inquired whether onsite detention with other mitigation methods could work. Noting the testimony from the neighboring property owners, she stressed the urgency in getting this resolved, adding that this project was at a standstill several weeks prior, and instead of a different engineer, a new attorney was brought in on this matter. Councilman Lou Signorino stated that there is an engineer employed for the project, and this was not a legal issue, but an engineering issue, and a solution needs to be heard by the Board. Mr. Lott responded that his position was clear on this, and that the solution was to return to the original proposal and put the drainage in the public ROW.

The Board Engineer attempted to give some context to the proposal, and stressed that under the stormwater regulations, standards must be dealt with, including reductions in peak flows, water quality, etc., and this is accomplished with onsite detention and other onsite improvements. He noted that the Board could grant a waiver from the onsite detention and require downstream mitigation, but it was not just a matter of directing the flow, but that the water must be able to go into the pipe, make the turn and get to either the Ziegler's or Witherspoons's pipe, etc., in addition to determining the rate of flow under various conditions. Mr. Ferriero observed that the information submitted from the applicant's engineer never clarified this, and the information is required to demonstrate that this option is better than onsite detention.

The Board continued to discuss the options of onsite detention versus directing the stormwater into pipes on neighboring properties, and Councilman Signorino inquired about the solution the applicant's engineer had come up with to resolve this matter. Mr. Lott responded that their engineer's solution was to direct the flow into the public ROW, and if that is not approved, a detention pond on the Joo's property would be the alternative. Mr. Lott then reminded the Board that this was not a formal hearing since there was no application being considered, and that the Board took conclusive action in April. When Mr. Gargano inquired why the applicant was before the Board at this meeting, Mr. Lott replied that the Board imposed conditions that could not be met with the soil permit previously approved because too many parties and government agencies would be required to agree to what was proposed. Mr. Germinario clarified that the conditions included granting of easements, and after the Board's approval it was discovered by the applicant's engineer that wetlands were present. Mr. Germinario expressed that he did not want to have the Board involved in a legal argument, but that the Board is determined to resolve the matter.

Gerald Gardner, the applicant's engineer, addressed the Board, advising that his firm was aware of the wetlands on the Ziegler's property and had spoken to the Board Engineer regarding this prior to the Ziegler's raising the issue of wetlands. He advised that he met with the Board Engineer in 2012 and suggested that a basin be constructed on the Joo's property, as well as numerous other plans that were developed, but they have been stymied each time they were ready for construction. With regard to his analysis of stormwater flows and pipe capacities, he noted that they did not expect the proposed pipe to handle a 100-year storm event. With regard to an emergency DEP permit, Mr. Gardner stated that he was confident that it would be issued, and Mr. Ferriero commented that a Letter of Interpretation would not be needed, but a transition area waiver would. Mr. Gardner stated that he had been in engineering for 45 years and he needed to know what the Board wanted to resolve this matter, adding that the Township accepted the subdivision that the subject property was a part of, and Public Works accepted the stormwater system that took the flow from the street into the wetlands. Mr. Lott interjected that there were pre-existing conditions and his client could not be responsible for fixing all the infrastructure in West Milford. Mayor Bieri responded that the problems did not exist in this location until Mr. Lott's client changed the conditions of his property. Mr. Germinario inquired whether Mr. Gardner was proposing that the best option was to use the Witherspoon property for connecting the drainage lines and remove the Ziegler's from the list, and Mr. Gardner responded that hydrologically it was the best solution, but there was a question about the responsibility for construction and maintenance. Mr. Ferriero remarked that an easement could be granted to the Township and the Township could maintain it, but the construction would be the responsibility of the applicant. Mr. Lott then requested a short recess from this matter so that he could confer with his client and their professionals as to their options.

The Board addressed other business matters during this time, including approval of invoices, minutes, and the Board Engineer's report on the streetscape improvements.

Mr. Lott returned and thanked the Board for their patience, and advised that the applicant was now proposing to install a temporary basin on his property. With regard to the project on the Witherspoon's property, his client would forfeit the installation and allow the Township to complete the drainage project. Mr. Ferriero inquired who would do the design work for this, and Mr. Lott replied that his client would be agreeable to submitting all the documents to the Township for the installation of the drainage pipes, and

Mr. Gardner noted that there was a plan with the pipe diameter proposed for the Witherspoon property. Mr. Lott further noted that, based on the investigation, it appeared that there was high ground water and underground utilities at the site of the proposed pipe connection and the applicant did not want to deal with these conditions. The Board was adamantly opposed to this solution and Mr. Ferriero stated that the applicant was attempting to pin his problem on the Township. Mr. Lott countered that this was a Township problem, to which Mr. Ferriero responded that he was aware that Mr. Lott had not read all the transcripts, but that this was not consistent with the testimony that has been before the Board. Mr. Lott then advised that the other alternative they could offer was to come back to the Board with a plan for a detention pond on site and meet all the required ordinance standards, and Mr. Germinario provided clarification of the proposal for the Board. Mr. Gargano and Mayor Bieri suggested that the applicant be required to remove all the fill that was brought to his site and return the site to its original conditions with the additional basins so that the surrounding property owners would no longer be affected. Mr. Germinario explained that Mr. Ferriero's report determined that complete site restoration would be impractical due to the amount of time required for the trees and vegetation to mature, and he did not want the Board to approve an option that was impractical. He continued to note that an onsite detention basin would assist in the stormwater issues and it is consistent with the ordinance, but the pipeline diversion would be a waiver from the ordinance. When Mayor Bieri inquired whether the applicant could remediate the additional flow on his own property, Mr. Ferriero explained that the system can be designed to meet the standards, but he stressed that the rate of the flow is what causes the problem since it overwhelms what is collected downstream, and higher volumes result in peak flow being cut down. Chairman Syme commented that, in theory, the detention system should work, and Mr. Germinario advised that if the ordinance is followed, it requires an onsite detention basin for dealing with the water, adding that if the Board determines that this is the best option, the plan would have to be approved prior to this matter returning to the Board for a hearing. Mr. Lott inquired about the Board's primary objection to the original proposal, and Mr. Ferriero responded that the Township did not have enough information for the site, and any funds on account would have to go towards plans, studies, construction. Mr. Siesta suggested that the Board require the applicant to plant mature trees on his property to replace the trees that were removed.

Board member Linda Connolly inquired about the measures to insure that the detention pond is maintained, and Mr. Germinario responded that when the project is approved, provisions can be made that the detention basins be maintained or the Township will do the work and charge the applicant. Mr. Lott stated that his client would do what the ordinance requires, and Mr. Ferriero noted that an easement would have to be in effect. The Board then requested the affected neighbors present to comment on the proposed detention basins. Mr. Witherspoon commented that he was concerned that this work would not solve his problem, and inquired whether the escrow account established could insure that he would not have more damage, adding that if the detention basins did not stop the flow, he was no better off than he was two years prior to this. Mr. Germinario advised that all the Board could do was try to remediate the problem caused by the tree cutting and the soil movement, that it may not be a 100% solution to the problem, but if the stormwater was addressed with the detention basin, and overflow occurred, then it will have to be dealt with. The Board continued to discuss the issues regarding overflow and storm drains, and Mr. Ferriero noted that there was a storm drain present on the Joo's side of the street, but the drain flows across the road. Mr. Ziegler cautioned the Board's Engineer to review this purportedly simple proposal carefully since the overflow water will cross the road and there was no clear answer where it would end up. Mr. Ferriero responded that this option was the most complicated option, but it was simpler due to the fact that it was all under the control of the applicant and his professionals. Chairman Syme commented that Board Engineer John Hansen initially advised that the onsite retention/detention basin was the best solution. Mr. Witherspoon inquired whether it was feasible to direct the flow away from his site by means of utilizing a storm drain on the applicant's side of the road and having the stormwater flow through pipes and away from the neighboring properties, and Mr. Ferriero responded that the capacity of the pipes were the issue. Mr. Witherspoon noted that he had no issues until 2011, and even if the conditions were returned to original state, he was not sure that the issues would be resolved, adding that if the Joo's or the Township do not do something to prevent the stormwater from flowing on to his property, he would have to do something himself. Mr. Germinario advised that the detention basins would mitigate the peak flow, and if there are still issues, the Township would have to address this in another manner, but the Board could only require the applicant to do what was required by ordinance, which was to return the site to previous conditions. He also noted that if the issue is created by volume, then the detention basins should not create more problems, and it remains to be seen if it continues after the project is constructed to meet the stormwater standards. Mr. Witherspoon commented about the trees that were removed and inquired about the absorption rate of the mature trees. Mr. Germinario replied that the stormwater measures to be taken should address the issues and the rate should return to pre-construction activity since the high CFM was the problem. Mr. Ferriero again noted that it was a complicated design that was being proposed, but it was all within the control of the applicant and his professionals.

The Board discussed the applicant's removal of trees from his property and the baseline conditions that must be met, with Mr. Ferriero stressing that the baseline conditions included a treed property. Mr. Gardner interjected that the trees were removed in 2009 and that the tree removal did not cause stormwater problems, but rather the movement of soil created the problems. The Board rejected this statement by Mr. Gardner. Mr. Ferriero advised that the applicant was required to bring the flow back to pre-existing conditions, and since the Township implemented their stormwater management plan in 2004, it was his opinion that these conditions are what the applicant's plan should comply to. Regarding the amount of time to prepare the plans, establish the pre-existing conditions, Mr. Lott inquired whether the engineers could meet and report back to the Board by the next meeting on June 27, 2013. Mayor Bieri rejected this proposal since it would not result in an approved plan by that time. Mr. Witherspoon expressed dismay over the anticipated delays, and inquired whether he could hire his own engineer to devise a plan, to which Mr. Lott

suggested that the applicant could turn the bond funds on file over to the Township and the Township could use this for the stormwater drainage work to be completed on the Witherspoon property. Mr. Germinario advised that the Board had already rejected this offer. Following discussion, it was determined that a Special Meeting of the Planning Board would be held on July 11, 2013 at 7:30 pm to address this matter, with new plans to be submitted by July 1, 2013 for review prior to the hearing. Mr. Germinario further advised that there would be no action from the Board, notice will be made by the applicant for the Special Meeting for the hearing on this matter, plans would be prepared and submitted, that all prior approvals were revoked, and new application would be made for the major soil permit. Mayor Bieri requested to go on the record that she was not pleased with the July 11, 2013 hearing date, and wanted this matter to be addressed on June 27, 2013, and expressed frustration that there was still no guarantee that the project will move forward.

The Board Secretary advised that she would be away for the July 11, 2013 Special Meeting, but would request the Board of Adjustment Secretary to substitute for the meeting. A notice will be provided to the newspapers advising of the Special Meeting on July 11, 2013 for the Sun Young Joo Major Soil Removal/Fill Permit application.

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 announced that the above matter was carried to the June 27, 2013 Regular Planning Board meeting based on the testimony heard at the May 23, 2013 Regular Planning Board Meeting.

MEMORIALIZATIONS – None.

ORDINANCES FOR INTRODUCTION – None.

ORDINANCES REFERRED FROM COUNCIL - None.

BOARD PLANNER'S REPORT -

BOARD ATTORNEY'S REPORT -

BOARD ENGINEER'S REPORT

Paul Ferriero, P.E. advised the Board that the contract for the Streetscape Project was awarded for construction, and that they are on track to begin within the next two weeks. The project included sidewalk installation, site lighting that includes light fixtures in two areas, and the center island at the intersection of Marshall Hill and Union Valley Roads will be updated to include a walkway, clock tower and lighting. Mr. Ferriero also advised that the corner at the intersection (by Shop Rite) will have a façade wall covered in fieldstone that will identify West Milford with lettering on the façade. Chairman Syme commented that he read the work was to be sponsored by local businesses, and Mr. Ferriero noted that there would be areas for plantings and two plaques indicating that this was a joint County and Township project.

With regard to Shop Rite (Inserra at West Milford), he advised that the plans had been approved and were being prepared for signatures. The Board members inquired if Shop Rite can be required to recycle by providing bins for items to be recycled. The Board Secretary reported that the Environmental Commission had requested that Shop Rite install No-Idling signs at their site to comply with the state law, adding that McDonalds had agreed to this during their recent site plan hearing before the Board of Adjustment. Councilman Signorino commented that the no-idling law was not enforceable in this town.

MISCELLANEOUS

Approval Of Invoices – Board Professionals

The invoices submitted by the Planning Board professionals for services performed during the month of April and May 2013 were **unanimously approved** on a **motion** by Robert Nolan, with a **second** by Glenn Wenzel.

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.

MINUTES

The Minutes from the April 4, 2013 Regular meeting were **approved** on a **motion** by Andrew Gargano with a **second** by Robert Nolan.

The following correspondence received was reviewed by the Planning Board and filed:

Highlands Water Protection And Planning Act Correspondence – None.

NJ Department of Environmental Protection Correspondence

1. No Further Action Covenant Not to Sue letter dated May 16, 2013 received from the NJDEP regarding 22 Glenridge Road, Block 1802; Lot 20 for the removal of a 550 gallon #2 heating oil USTS.
2. Copy of a treatment works approval application received on May 23, 2013 from Joan DeFreest of 195 Awosting Road, Block 4016; Lot 1 requesting an exemption from the sewer ban for the abandonment of an existing malfunctioning septic system and connection to the existing MUA sewer line.

MISCELLANEOUS CORRESPONDENCE

1. Notice from Passaic County Department of Planning and Economic Development advising that on May 2, 2013 Passaic County Future was adopted as a Sustainability Element of the Passaic County Master Plan, with a copy provided to the Township Clerk's Office.
2. Report from Michael Hakim, Planning Board Landscape Architect, dated May 28, 2013, regarding revised site plans for Inserra/WestMilford -Shop Rite, advising that his previous comments made in the review of March 28, 2013 had been satisfactorily addressed with the revisions.

NEW BUSINESS

Hydraulic Fracturing - Aquifer Testing

Board Attorney Tom Germinario advised the Board that a request had been made by Planning Board Member Linda Connolly to consider an amendment to the aquifer-testing ordinance to prohibit hydraulic fracking used to improve flow for test wells. Mr. Germinario reviewed the matter, and it was his opinion that any procedure permitted under state law has to allow a methodology that will bring results. He further noted that if this is a Health issue, the Board could not address it in the land use provision, and the Township Council would have to address the matter. Mr. Germinario stated that if the concern raised relates to the Braemar development, under the settlement, they only have to observe the provisions of the aquifer testing ordinance as of the date of the settlement, and even if it changes, Braemar would not have to comply with the new requirements. Ms. Connolly expressed concern about the hydrofracking procedure being used on any well. She requested that there be a provision to notify the Township and the neighboring property owners when hydrofracking is proposed for a well. Mr. Germinario suggested that there may be regulations with the NJDEP. Chairman Syme inquired whether our hydrogeologist, Matthew Mulhall of M2 would have to be notified if Braemar was employing hydrofracking procedures, and Mr. Germinario responded that the NJDEP permits hydrofracking and it is not something that Mr. Mulhall would have to supervise. He continued, noting that when the injection of water is used in the hydrofracking process, the applicant was notified that the water would have to be withdrawn so that it is not counted towards the total water supply. Mr. Germinario advised that if the fracking interferes with neighboring wells that it would show in the final results of the drawdown effect on the surrounding wells. Ms. Connolly suggested that hydrofracking could have an effect on the fractures that connect the wells, and again stated that there should be notification of proposed hydrofracking when well drilling occurs. Mr. Germinario commented that this was something that the Township Council may want to consider since it would involve a Board of Health ordinance. Chairman Syme advised Ms. Connolly that this appeared to be a matter that must be brought to the Township Council, and Mr. Germinario concurred, adding that this matter was outside the jurisdiction of the Planning Board.

ADJOURNMENT

With no further business to come before the Planning Board, a **motion** was made to **adjourn** the Regular Meeting of June 6, 2013 at **10:07 p.m.** by Councilman Luciano Signorino with a **second** by Robert Nolan.

Approved: October 24, 2013

Respectfully submitted by,

Tonya E. Cubby, Secretary