

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

June 25, 2009

Regular Meeting

The Regular Meeting of the Planning Board was opened at 7:32 pm 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, Douglas Ott, Chris Rosica, Clinton Smith, Geoffrey Syme, Councilman Philip Weisbecker, Alternates Michael Siesta and Kerry Goceljak, Chairman Andrew Gargano, Board Attorney Thomas Germinario, Board Engineer Paul Ferriero.

Absent: Richard McFadden, Board Planner Charles McGroarty.

Chairman Gargano advised that Alternate Michael Siesta would sit in for absent Board member Richard McFadden and that Chuck McGroarty, Board Planner, would not be present for this meeting.

PUBLIC PORTION

The Public Portion was opened by the Chairman. Resident Dale Meadows approached the Planning Board to address issues regarding Richard Slifer, and was advised by Thomas Germinario, Board Attorney, that any comments regarding applications or applicants on this agenda were to be held until the public hearing for a particular application. With no one else present wishing to address the Planning Board, the Public Portion was closed on a **motion** by Chris Rosica and a **second** by Councilman Philip Weisbecker.

SITE PLAN APPLICATION REVIEW WAIVERS – None.

APPLICATIONS

TIME EXTENSIONS

Carried from May 28, 2009

RICHARD SLIFER

Preliminary and Final Site Plan #0620-0260AB

Block 15701; Lot 34

5 Allison Avenue; HC Zone

Seeking: A One-Year Time Extension for Final Site Plan Approval.

Richard Slifer, 62 Schofield Road, was present to address the Board regarding the request for a time extension of his final site plan approval for 5 Allison Avenue. Also present to address the Board was Lorraine Slifer, his wife. This request for an extension of site plan approval had been carried from May 28, 2009 regular Planning Board meeting. Mr. Germinario referred to photos and a status report received on June 25, 2009 from the Zoning Officer, Jim Lupo, regarding past violations for the subject site and the applicant's attempts to address the issues. Mr. Germinario distributed the documents to the Board for review. Mr. Slifer noted that the arborvitaes planted along the driveway were planted by an adjacent property owner. Mrs. Slifer recounted an appearance before the Planning Board on February 27, 2007 in which the arborvitaes were discussed and a determination was made regarding these shrubs. She stressed her frustration in getting an accurate account of the meeting that transpired, noting that the audio recording had not been working and the minutes did not include enough information about some of the disputed issues. Mr. Slifer recounted for the Board that, following the purchase of the building and property at 5 Allison Avenue, he demolished the interior of the building, put in new electrical service, and renovated the building for his intended use, adding that it took four months to receive an electrical inspection. When he began work on the exterior he was stopped, pending the issuance of a soil stability test. He stated that he understood why the neighbors feel he has not done any work at the site but, he continued, he was stopped from doing everything he attempted to do. Mr. Slifer commented about one of his court appearances for a sign violation where he was allegedly mistreated by a court official, and gave his opinion that there was "rampant corruption" in the municipality.

Chairman Gargano advised that the neighboring property owners' comments were due to what they were viewing of his site from their own properties, adding that there were substantial items on the list that had not been addressed. Mr. Slifer stated that he has not been able to accomplish the work intended, and had been discouraged by the damage occurring on his property, including smashed windows and a door being dented. He inquired why he lost his C.O., adding that he was prevented from using the building. Mr. Germinario reviewed the resolution of approval, explaining that Mr. Slifer had changed his use back in 2007 from existing residential to a mixed use, and the resolution of approval for his site plan set the conditions for a certificate of occupancy, adding that these conditions had not been met. Mr. Germinario then advised Mr. Slifer that he was not helping his cause by making various unsupported accusations of "rampant corruption." Chris Rosica, Board member, asked for some clarification on court testimony referred to by Mr. Slifer during the prior Planning Board meeting. Mr. Germinario clarified that the transcript of the court testimony was somewhat

vague, but it appeared that the judge ruled that the carpet cleaning trucks could be stored at the site. Mr. Germinario cited the Zoning Officer's report that there were other trucks at the site, to which Mr. Slifer replied that they were all "flood restoration trucks."

Paul Ferriero, Board Engineer, noting that the applicant seemed confused about the M.L.U.L. and the meaning of site plan approval, attempted to clarify the law as it related to Mr. Slifer's application. Mr. Ferriero emphasized that there were conditions of approval that had to be met as a result of the site plan approval, adding that, to his knowledge, those conditions have not been met. He advised Mr. Slifer that no work at the site could start until all the conditions have been met, including drainage, adding that cleaning a site and fulfilling a site plan were two different matters. Mr. Slifer stated that he had received an approved site plan, but Mr. Ferriero once again advised that it was not an approved plan until all the conditions had been met. He commented that he understood the applicant's confusion and noted that the process was complicated. Mr. Slifer then advised the Board that he had three interested purchasers for his property, and requested a one-year extension so that he could sell the site with the site plan approval.

Chairman Gargano opened the meeting to the public at this time. The following approached the Planning Board with regard to this matter:

Dale Meadows, 483 Otterhole Road, West Milford, was sworn in by Mr. Germinario. Mr. Meadows distributed Objector Exhibit #1 that included a June 24, 2009 letter to the Planning Board from Mr. Meadows, and photos and newspaper clippings as supporting material for his objection to the extension. He noted that this objection is a result of Mr. Slifer's neglect of property he owns on Schofield Road. Mr. Meadows read his letter into the record and stated that his property value has been negatively affected, in addition to the affects on his quality of life, and requested that the Township establish cross-referencing procedures so that approvals and permits would not be given to residents with violations. He referenced Mr. Slifer's tree cutting business and requested that zoning violations be enforced. Mr. Germinario advised that the Planning Board is not empowered to undertake zoning enforcement and that the properties referenced in Mr. Meadows complaints were not applicable for this Board. Mr. Germinario further noted that the Board was not giving Mr. Slifer "carte blanche" approval, and that he would be required to comply with all conditions of site plan approval if the Board granted the extension. Mr. Meadows cited various incidents relating to Mr. Slifer's property, and Mr. Germinario advised that the Planning Board is not an enforcement body, and that it is the responsibility of the Zoning Officer to enforce violations. Mr. Meadows was advised by the Chairman and the Mayor to report violations and file reports with the appropriate officials. Mr. Rosica commented that the local ordinances are being improved, but that enforcement procedures must also improve. Mayor Bieri also advised that the Township had approved the purchase of a spatial data system that will cross reference permits, violations, and applications within the Township. Mr. Meadows closed his comments by stating that any application made with the Township should be investigated before coming before the Board.

Mark Kleindienst, 62 Allison Avenue, West Milford, was sworn in by the Board Attorney and addressed the Board about various issues with the subject property and property owner, and commented about the responsibilities of a new property owner. Mr. Kleindienst referred to a memo from the Health Department, dated September 2008, regarding the septic not receiving approval, and inquired whether the new owner would repair the septic. He noted that there were trucks parked near the site, and the adjacent properties are in a residential zone. Mr. Rosica commented that this was a zoning issue. Mr. Germinario advised that if a new owner purchased the site, he would be required to return to the Planning Board if he chose to do anything different from what is there now. Mr. Kleindienst stressed that he wanted the problems fixed by either the current owner or a new owner, and he gave a metaphor of "Door #1 or Door #2" when referring to Mr. Slifer or a new owner. Mr. Rosica inquired of Mr. Germinario whether a new owner would have to comply with the one year timeline, and Mr. Ferriero, Board Engineer, advised that they could let the site plan approval expire or they could complete the work that was approved.

With no one else present wishing to address the Planning Board, the public portion for this matter was closed on a **motion** by Chris Rosica and a **second** by Councilman Weisbecker.

Mr. Ferriero then advised the Board that there were basically two options: extend the site plan approval and hope that the work gets completed, or let it expire and take the chance that a new owner or the current owner would come back for a new site plan approval. Mr. Ferriero then suggested that the Board give approval, but have the applicant meet all conditions within 60 days. Mr. Slifer stated that he did not have the money to complete the site plan work, and wanted to close on the sale of this property as soon as possible. He also stated that he had three offers on the property and would close as soon as possible, if he were granted an extension. Chairman Gargano suggested that the most practical choice would be a buyer who is more apt to close in the least amount of time. Geoffrey Syme, Board member and Vice Chair, noted that an extension of site plan approval made sense, but imposing less time to complete the site plan improvements, as Mr. Ferriero suggested. He also suggested status updates on the progress of the sale. Mr. Slifer stated that he might lose a sale of the subject property if the site plan approval was not extended for 12 months. Mr. Ferriero suggested the Board approve a

12-month extension with a possible 90 days for completion of the work. The Board discussed various alternatives. Mr. Slifer stated that he had been in contact with a local realtor to list the property for sale. Mayor Bieri commented to Mr. Slifer that he had already advised that he had interested buyers, adding that giving a blanket extension of site plan approval would not be acceptable. Mr. Syme suggested that a letter giving a status update be required from Mr. Slifer within 90 days of approval of an extension. Mr. Castronova inquired whether the applicant intended to complete any of the work that was approved on the site plan, and Mr. Slifer replied that he did not have the funds to do the work. Mr. Ferriero advised the applicant that the conditions of his resolution of final site plan approval were not difficult and could be completed in about two weeks. He then suggested six months for completion of the site plan project, with an update in 90 days of extension approval. Mr. Germinario advised that the approval would be for one year from the initial date (May 24, 2009) of the expiration of final site plan approval. Following clarification by Mr. Germinario of the conditions of extension approval for the Board and the applicant, a motion was made for a one-year extension of site plan approval.

Motion by Chris Rosica with a **second** by Geoffrey Syme to approve a one-year time extension, until May 24, 2010, for final site plan approval for Richard Slifer, Block 15701; Lot 34, 5 Allison Avenue, with the conditions that (1) within six months, or until December 26, 2009, all requirements of Condition #3 of Resolution #2007-17 would be met, and (2) within three months, or by September 26, 2009, the applicant would be required to provide a written update on the status of the sale of subject property to the Planning Board.

Roll Call: **Yes** - Mayor Bettina Bieri, Steven Castronova, Douglas Ott, Chris Rosica, Michael Siesta, Clinton Smith, Geoffrey Syme, Councilman Philip Weisbecker and Chairman Andrew Gargano.

No - None.

PENDING APPLICATIONS

MEMORIALIZATIONS

RESOLUTION #2009-11

1952 UNION VALLEY ROAD, LLC

Complete: September 8, 2008

Preliminary & Final Site Plan #0820-0167AB

Decision By: July 2, 2009

Block 3601; Lots 1 & 3

Seeking: Preliminary and Final Site Plan Approval and Variance Relief for the removal of an existing structure and the construction of a new deli/convenience store with two apartments.

Chairman Gargano recused himself from this matter and Alternate Kerry Goceljak was asked to sit on the Board in his absence.

Mr. Germinario advised the Planning Board about the request received from the applicant for a dismissal without prejudice with the stipulation that the applicant could return within one year to reinstate the application with no new application fees. He recommended approval of the dismissal without prejudice due to the applicant's pending appeal following litigation with a neighboring property owner.

Motion by Councilman Philip Weisbecker with a **second** by Chris Rosica to approve Resolution #2009-11 to Dismiss Without Prejudice the Preliminary & Final Site Plan for 1952 Union Valley Road, LLC, and permitting the applicant to return within one year to reactivate the application.

Roll Call: **Yes** - Mayor Bettina Bieri, Steven Castronova, Kerry Goceljak, Douglas Ott, Chris Rosica, Michael Siesta, Clinton Smith, Geoffrey Syme, Councilman Philip Weisbecker.

No - None.

NEW APPLICATIONS - None

NEW BUSINESS

Addendum to Developer's Agreement for Sunny Blue, LLC / Walgreen's.

Mr. Germinario advised the Board that the addendum to the Developer's Agreement was not complete and asked that this matter be carried to another meeting.

ORDINANCES FOR INTRODUCTION

ORDINANCES REFERRED FROM COUNCIL

Amendments to Ordinance 2009-007 Establishing Procedures for Temporary Outdoor Display and Sale of Merchandise and Seasonal Farmer's Markets.

Mayor Bieri Advised the Board that **Ordinance 2009-016, An Ordinance Of The Township Of West Milford, County Of Passaic, State Of New Jersey To Amend And Supplement Certain Portions Of**

Chapters 414, 420, And 500 Pertaining To The Township's Land Use Regulations To Clarify Procedures Regarding Time Periods And Locations For The Temporary Outdoor Display And Sale Of Merchandise And Seasonal Farmer's Market was introduced at the prior night's Township Council meeting, adding that the amending ordinance merely clarified some of the procedures and language in the former Ordinance 2009-007. Mr. Germinario advised that the new ordinance is consistent with the Master Plan.

Motion by Chris Rosica with a **second** by Councilman Weisbecker to recommend the adoption of Ordinance 2009-016, finding it consistent with the intentions of the Master Plan.

Roll Call: **Yes** - Mayor Bettina Bieri, Steven Castronova, Douglas Ott, Chris Rosica, Michael Siesta, Clinton Smith, Geoffrey Syme, Councilman Philip Weisbecker and Chairman Andrew Gargano.

No - None.

The Board Secretary was instructed to send a memo to the Township Council advising of the Board's recommendation.

PLANNING BOARD PLANNER'S REPORT – None.

PLANNING BOARD ATTORNEY'S REPORT – None.

PLANNING BOARD ENGINEER'S REPORT – None.

MISCELLANEOUS

Approval Of Invoices – Board Professionals

Motion by Councilman Weisbecker with a **second** by Chris Rosica to approve the invoices for contract charges and escrow charges for the Planning Board professionals. The Board approved the payment of invoices by **unanimous consent**.

Subcommittee Reports

Master Plan Subcommittee – None.

Ordinance Subcommittee – None.

Building Design Subcommittee – None.

Site Plan Committee – None.

Cancellation of July 2, 2009 Planning Board Meeting

Chairman Gargano announced, following Board consent, that the Planning Board meeting of July 2, 2009 would be cancelled. The Board Secretary would send out the requisite notices to the newspapers and post it on the bulletin board and Township website.

Zoning Issue on Greenwood Lake Turnpike

Councilman Weisbecker inquired about the status of zoning violations at commercial property on Greenwood Lake Turnpike, next to West Milford Flooring and the Greenwood Forest Fire Company site. The Chairman invited Mr. Vincent James Lupo, Zoning Officer, who was present at this meeting, to update the Board on the status of this matter. Mr. Lupo advised that the owner received a violation and was issued a final notice; a court appearance is pending. Mr. Lupo noted that a new sign was erected and he had the owner remove the sign. He subsequently was advised that the owner of the subject business also owned a cleaning company and was observed cleaning carpets in the road with cleaning chemicals. The owner was advised that he would be issued a summons for every day he does not comply. Councilman Weisbecker commented that this is a site plan issue, and Mr. Lupo replied that this is a use variance issue. Chris Rosica inquired if additional help was available to assist Mr. Lupo in addressing the numerous zoning issues in this large Township.

MINUTES

The Chairman requested that the minutes of the May 28, 2009 Regular Meeting be presented for approval at the next Planning Board meeting following review by all Board members. Mr. Germinario noted that, as they were complete, the minutes could be provided to the public in *draft form*.

The following were noted and filed:

COMMUNICATIONS

1. Notice of Violation from the NJ DEP Bureau of Coastal and Land Use Compliance & Enforcement received on May 22, 2009 for Gregg & Loree Rodriguez, Block 14901; Lot 35, 50 Oxbow Lane, regarding placement of soil and grading within 2000 sq. ft. of a riparian buffer without permits.
2. Approved Freshwater Wetlands Transition Area Redevelopment Waiver dated May 19, 2009 for the WM M.U.A. Awosting Wastewater Treatment Plant, with conditions.

3. No further Action and Covenant Not To Sue received from the NJ DEP dated May 26, 2009 for Gregory Wright, 181 High Crest Drive with regard to a 550 gallon UST remediation.
4. Applicability Determination regarding Flood Hazard Area for Block 4106; Lot 1 – No approval necessary as the proposed project is not a major development.
5. Application for a Treatment Works Approval received on May 28, 2009 for Shiloh Bible Camp regarding a septic system replacement for Block 6002; Lot 47.
6. NJ Site Remediation and Reform Act and NJ EDA Clean Energy Solutions Grants & Loans Program – June 29, 2009 – Public Safety Academy, Wayne, NJ.
7. Administrative Order and Notice of Civil Administrative Penalty Assessment for Ernie and Barbara Suto, Block 11001; Lot 58, 24 Dudley Street, regarding unauthorized activities within the stream channel, State open waters, and the delineated flood hazard area of West Brook by regarding.
8. No Further Action and Covenant Not to Sue letter received from the NJ DEP dated June 11, 2009 for Andrezej Krempaski, 59 Sugar Maple Avenue, Block 15301; Lot 1, regarding removal of a 1,000 gallon #2 Heating Oil Underground Storage Tank System.
9. Notice of a General Permit Application received for Louis & Lorraine Ponce, 28 Vreeland Road, regarding the cutting or clearing of trees and the removal and replacement of an existing subsurface sanitary disposal system.
10. Notice of a General Permit Application received for Mark Terpsta and Tracey Timothy, 63 Oxbow Lane, regarding the cutting or clearing of trees and the removal and replacement of an existing septic field.
11. Notice from Cherry, Weber & Associates regarding anticipated replacement of the Bi-County Bridge 1400 – 323 Cozy Lake Road over the Pequannock River, Jefferson Township, Morris County and West Milford Township, Passaic County.
12. Letter from the NJ DEP regarding the West Milford Lake Dam, dated June 10, 2009, advising the Township that they would be responsible and financially liable for the breaching of the dam if ownership was transferred to the Township.
13. Recertification of a soil erosion and sediment plan for Fieldstone at Highcrest Lake received on June 15, 2009 from Hudson Essex Passaic Soil Conservation District.
14. Approval notice from the NJ DEP to Camp Vacamas, 256 Macopin Road, regarding the Henion Pond Dam interim repairs to address subsidence problems on the crest, and outlining the conditions necessary for the interim repairs that must be completed by July 15, 2009.
15. Notice from the NJ DEP to Joan Krause, 7 Madelyn Avenue, accepting the Remedial Action Report, but referring any concerns about well water should be addressed with an analysis from a NJ certified laboratory.

HIGHLANDS WATER PROTECTION AND PLANNING ACT

1. Additional information sent to NJ DEP on May 20, 2009 regarding Technical Incompleteness for a Highlands Applicability Determination for Shoebox Storage, Block 16006; Lot 1.01.
2. Highlands Exemption #4 and Water Quality Management Plan Consistency received from the NJ DEP dated June 17, 2009 for Vincent Lanza (Vreeland Store), Block 9501; Lot 12, 1385 Macopin Rd., subject to receipt of all required permits and approvals by Federal, State, County and local entities, and subject to the approval being nullified if there is a change in use or scope of the project, a change in the method of wastewater treatment, or if the information submitted is later deemed inaccurate.

ADJOURNMENT

Prior to adjournment, Chairman Gargano announced that the Boston Crusaders, a well-known marching band, would be performing for the benefit of the West Milford High School Band on July 5, 2009. He added that this was one of the many 175th Anniversary events planned for the Township.

With no further business to come before the Board, the Planning Board meeting of June 25, 2009 **adjourned** at 9:12 pm on a **motion** by Michael Siesta and a **second** by Chris Rosica.

Approved: 09-03-09

Respectfully submitted by,

Tonya E. Cubby, Secretary