

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

August 3, 2017

Regular Meeting

Chairman Christopher Garcia opened the August 3, 2017 Meeting of the West Milford Planning Board at **7:30 p.m.** with a reading of the Legal Notice, followed by the Pledge of Allegiance.

ROLL CALL

Present: Mayor Bettina Bieri, Linda Connolly, Chairman Christopher Garcia, Andrew Gargano, Warren Gross, Alt #2 Michael Siesta, Glenn Wenzel, Board Attorney Thomas Germinario.

Absent: Alt #1 Steven Castronova, Douglas Ott, Councilman Lou Signorino, Geoffrey Syme, Board Planner Chuck McGroarty, Board Engineer Paul Ferriero.

Chairman Christopher Garcia requested Alternate #2 Michael Siesta to sit in for one of the absent Board members and advised that a quorum was present to hold this regular meeting.

PUBLIC PORTION

Chairman Christopher Garcia opened the meeting for public comment and the following addressed the Board:

Richard Randazzo, 278 Wooley Road, referenced the June 22, 2017 Planning Board meeting and some confusion on the proposed ordinance amendments that needed clarification. He observed that the ordinance language was for written for interpretation by a professional who would be involved with the well testing procedure. Mr. Randazzo commented on the former Braemar application and the percentages for recharge, and Mr. Germinario stated that the Board was not in the position to change what had occurred with the Braemar application, but noted that some of the amendments being proposed may address some of his concerns. Mr. Randazzo requested clarification on recharge requirements, and Mr. Germinario observed that the recharge referred to in the ordinance was not referring to daily use. The aquifer ordinance, which, he noted, is a testing ordinance, requires the maximum pumping stress to be put on the aquifer, and it will determine if it comes back, (or recharges) 90% during a certain period of time. Mr. Germinario provided a further explanation on the testing procedure for Mr. Randazzo. Mr. Randazzo remarked that it was his understanding that the former Braemar property was in a wetlands area so there was no water going into the ground or the aquifer, and he did not feel that there was any regard for surrounding properties when testing was done following the Board approval. Mr. Germinario explained that if testing more than one well, the ordinance provides for a mathematical model that can be developed to determine the effect on the other wells. He continued to explain that each site would not have to be tested to determine the effect, since the science of hydrogeology allows, based on one or two wells, a modeling of the overall effect in the area on all the proposed wells. The Board's expert, M2 Associates, concluded that, with the reduction of 5 wells, the mathematical model on the two well tests could implicate the effect on the other wells and determine whether they will be acceptable. Mr. Randazzo commented that one of the neighbors has no water and he believes that is due to the well testing on three wells nearby. With regard to the Braemar matter, Mr. Randazzo noted that the majority of the testimony and responses to the Board's questions were provided by the applicant's attorney, not their professionals. Mr. Germinario maintained that the Board took action based on the testimony and reports of their own hydrogeologist, M2 - Matthew Mulhall, not the applicant's hydrogeological specialist (Maser).

Mr. Randazzo was concerned that there may be developers who may try to get approval for new development, and Mr. Germinario advised that absent a repeal of the Highlands Act, any new major development is almost impossible, adding that the Braemar and Levkovitz subdivision applications were essentially grandfathered, but no other large scale residential developments would be permitted. Mr. Randazzo stated that he wanted to be sure that when he sells his house that there is water. He questioned the ordinance with regard to the number of bedrooms, and Mr. Germinario noted that the ordinance did not get down to that level and it shouldn't be drafted to be that specific since there should be enough

latitude for an applicant to review all the factors, including the average in the area, the average number of people in a dwelling, in addition to potential irrigation and pool filling, etc., and to bring all those factors together. He continued to comment that the ordinance could have just provided a formula to the applicant's hydrogeologist and make it a requirement to use that formula, but that would not be advisable since it removes the decision making out of the hands of the expert (hydrogeologist). Mr. Germinario explained that it also would present a problem of arbitrariness, and gave an example of the ordinance setting a standard of three bedrooms = three people, five bedrooms = 5 people, but this would have to be determined on a factual basis since those figures can change over time and in different neighborhoods. Mr. Germinario advised that the expert hydrogeologist should be given latitude to use the changes that may develop over time.

Mr. Randazzo inquired about the meaning of litigation and how it applied to the Braemar application, and Mr. Germinario explained that the Board was involved in a case that went to court, and disclosure of certain information related to litigation cases have to be treated carefully since the information could be used by an adversary. There were instances when it became necessary for the Planning Board to go into closed session to discuss the Board's position in the case, and certain information was considered privileged or confidential and should not have been aired in public until the litigation ended. Mr. Randazzo had no further comments.

With no one else requesting to address the Board, Chairman Garcia **closed** the public portion on a **motion** made by Andrew Gargano with a **second** by Glenn Wenzel.

APPLICATIONS – None.

MEMORIALIZATIONS

Resolution 2017 – 07

A RESOLUTION OF THE TOWNSHIP OF WEST MILFORD PLANNING BOARD AUTHORIZING THE AWARD OF A PROFESSIONAL SERVICES CONTRACT IN AN AMOUNT NOT TO EXCEED \$2,500.00, AMENDING THE ORIGINAL CONTRACT AWARDED TO M2 ASSOCIATES INC.

Chairman Garcia advised that M2 Associates' contract (Matt Mulhall) required an amendment due to his budget account being reduced by half (from \$5,000) by the Township Council for the 2017 budget year. The Secretary was advised by the Finance Dept. that this contract may be increased at the end of the year if it becomes necessary when all of the invoices have been submitted for professional hydrogeological services and they exceed the \$2,500. in the account. Board member Andrew Gargano commented that if the Planning Board's budget is reduced in the future, he wanted the Council to justify to the Board the reason for the reductions. Board member Warren Gross remarked that the M.L.U.L. requires municipalities to provide funds for Board professionals. Board Attorney Tom Germinario concurred, noting that the governing body must provide sufficient funds for the Board to operate.

Following discussion, a **motion** by Andrew Gargano with a **second** by Michael Siesta to approve Resolution #2017-07 amending the original Planning Board contract for M2 Associates to \$2,500.00 for 2017.

Roll Call

Yes: Mayor Bettina Bieri, Linda Connolly, Andrew Gargano, Warren Gross, Michael Siesta, Glenn Wenzel, Chairman Christopher Garcia.

No: None.

Motion approved.

NEW OR ONGOING BUSINESS

West Milford Historic Preservation Commission Design Guidelines & Draft Ordinance Amendments

The Board Attorney advised that there may be issues with Master Plan consistency with the Historic Preservation Commission draft ordinance and design guidelines that were provided to the Board for review. He suggested that the Board Planner, Chuck McGroarty, should examine the draft documents for consistency with our Master Plan to determine if an amendment is necessary to the Master Plan. He noted that the Township does have an existing Historic Preservation Element in the Master Plan, but it would be good to examine it against the M.L.U.L. definition of the HPC powers. He further advised that in a weak role, the Historic Preservation Commission serves in an advisory position, but in a stronger

role, they may have power to veto a building permit. He recommended that the Board Planner review the draft design guidelines and draft ordinance amendments to determine if they are consistent with the Township's Master Plan. They may also be referred to the Board's Ordinance Committee for review. The Board members unanimously approved the referral of this matter concerning the Historic Preservation Commission ordinance documents to the Board Planner for review and advisement to the Board.

ORDINANCES FOR INTRODUCTION

Draft Aquifer Ordinance Amendments for Review and Discussion

Ordinance of the Township of West Milford Amending and Supplementing Chapter 470, Subdivision of Land and Site Plan Review" Section 470-15.1, "Water Supply and Water Quality Requirements," Part B, Definitions," Part D "Aquifer Test and Hydrogeologic Evaluation," and Part E, "Water Quality Evaluation"

Chairman Christopher Garcia advised that Board that he listened to the recording of the prior meeting and read the minutes with respect to the aquifer ordinance amendments. The Board Attorney observed that he read the minutes and understood some of the discussion among the Board members at the last meeting, but some of the comments were not very clear. He further commented that it would not have been wise for the hydrogeologist to attend this Board meeting considering that many of the comments and questions arising from the Board members' conversation were unstructured. He noted that one concern that was raised dealt with the ordinance not addressing daily use. Warren Gross commented that he felt that the ordinance should have been defined in simpler language, but with his further examination of the entire ordinance, including the amendments, he feels that his questions may have been answered. Mr. Germinario concurred that when the complete ordinance with the amendments incorporated is examined, it is clearer to understand. Mr. Gross inquired about the distance between the homes that were being tested in the former Braemar subdivision, and Mr. Germinario responded that the houses that were in the zone of testing were at different locations to determine the model, but 500 feet is what is stated in the report. Mr. Germinario observed that when the Board needs to address ordinance amendments in the future, a complete document should be generated for the Board to review. Mayor Bettina Bieri advised that the Council receives amendments for ordinances with strikeouts in red so it is clear what is being changed or added. Mr. Gross inquired what recourse a property owner would have if they run out of water when a development is occurring near their site, and whether a deeper well may have to be drilled. Mr. Germinario responded that the ordinance doesn't really deal with this matter, and it was more of a legal question and quite complicated, with numerous court decisions that have been made on this issue. He noted that if a new well is drilled near an existing well, there could be damages imposed if it is proved that the new well caused the existing well to fail. Who would be responsible to pay for the new well would have to be determined through the courts. He further noted that the 500 feet referenced in the Township's ordinance was only for determining the anticipated zone of influence. He referred to Matt Mulhall's explanation regarding fractured bedrock patterns, i.e. where someone drills next to a well and may not have any influence, but another may be a distance away and experience a major effect since it is all based on the fissures in the aquifer that may be present. He noted that individual cases are sensitive to the particular facts of each situation.

Mr. Germinario advised that he would re-format the ordinance with the mark ups and changes in red and forward it to the Township Attorney. Chairman Garcia noted that if there are additional amendments, they can be made in the future. Mayor Bieri inquired if Linda Connolly, who reviewed the ordinance as a member of the Ordinance Committee, approved the amendments that were being proposed, and Ms. Connolly responded that she approved of them.

With no further comments from the Board on this matter, a **motion** was made by Mayor Bettina Bieri, with a **second** by Warren Gross, to **approve** the amendments to §470-15.1 "Water Supply and Water Quality Requirements, Part B- Definitions, Part D–Aquifer Test and Hydrogeologic Evaluation, and Part E–Water Quality Evaluation.

Roll Call

Yes: Mayor Bettina Bieri, Linda Connolly, Andrew Gargano, Warren Gross, Michael Siesta, Glenn Wenzel, Chairman Christopher Garcia.

No: None.

Motion approved.

ORDINANCES REFERRED FROM COUNCIL – None.

BOARD PLANNER'S REPORT – None.

BOARD ATTORNEY'S REPORT – None.

BOARD ENGINEER'S REPORT – None.

MISCELLANEOUS

Invoices

The Board **unanimously approved** the invoices submitted for the Planning Board professionals for June and July 2017 on a **motion** made by Mayor Bettina Bieri, with a **second** by Michael Siesta.

MINUTES

Those members of the Board who were present at the June 22, 2017 Planning Board meeting **unanimously approved** the Minutes that were presented on a **motion** by Michael Siesta and a **second** by Linda Connolly. Mayor Bettina Bieri, Andrew Gargano, Chairman Christopher Garcia abstained on the motion.

The following correspondence items were reviewed and filed:

Highlands Water Protection and Planning Act Correspondence

1. None.

NJ Department of Environmental Protection Correspondence

1. No Further Action correspondence received from the NJDEP, dated July 11, 2017, for 58 Cedar Brood Road, Block 1807; Lot 17, regarding the removal of a 2000G #2 HO UST.
2. Surface Water GPA Renewal, Category: BPW-Potable Water Treatment Plant General Permit for the Pequannock Water Treatment Plant and the City of Newark received from the NJDEP, dated July 24, 2017, effective October 1, 2017, with an expiration date of September 30, 2022.
3. Flood Hazard Area Individual Permit, dated June 28, 2017, received from the NJDEP for John Saye, 743 East Shore Road, Block 4301; Lot 4, for the reconstruction of a bulkhead within the flood hazards area of Greenwood Lake.
4. NJDEP Suspected Hazardous Substance Discharge Notification, dated July 6, 2017, regarding 364 Lakeside Road, Block 3107; Lot 7 and the removal of a 550 gallon #2 H.O. UST; clean-up is pending.
5. NJDEP Suspected Hazardous Substance Discharge Notification, dated July 6, 2017, regarding 55 Somerville Road, Block 3012; Lot 6 and the removal of a 1000 gallon #2 H.O. UST; clean-up is pending.
6. NJDEP Suspected Hazardous Substance Discharge Notification, dated July 8, 2017, regarding Abram S Hewitt State Park and Block 2709; Lots 5 & 6. POET System for treatment of MTBE spill may be affecting adjacent neighbor's well.
7. NJDEP Suspected Hazardous Substance Discharge Notification, dated July 8, 2017, regarding 9 and 13 Homestead Road and Block 2709; Lots 5 & 6. Caller suspects conspiracy regarding MTBE spill.
8. NJDEP Suspected Hazardous Substance Discharge Notification, dated July 13, 2017, regarding 9 & 13 Homestead Road, Block 2709; Lots 5 & 6. Caller indicates water treatment system for MTBE spill malfunctioned and his adjacent well is affected.
9. NJDEP Suspected Hazardous Substance Discharge Notification, dated July 21, 2017, regarding 40 Stevens Road, Block 7701; Lot 19. Caller reported vacant house had approximately 3 inches of #2 H.O. in the basement. The local Health Dept. was also notified.
10. NJDEP Suspected Hazardous Substance Discharge Notification, dated July 20, 2017, regarding 1892 Macopin Road, Block 8101; Lot 42. Caller states that the weed killer being applied by the County was killing her plants.

Miscellaneous Correspondence Received/Sent

1. HEPSCD certification of a soil erosion and sediment control plan, dated June 19, 2017, received for Safargar Burnt Meadow Driveway and Grading regarding 890 Burnt Meadow Road, Block 4601; Lot 15, with certification valid for 3.5 years.

2. HEPSCD certification of a soil erosion and sediment control plan, dated June 19, 2017, received for the Township of West Milford regarding Ridge Road Section 3 Contract 4 (Alpine Ridge – Vreeland), with certification valid for 3.5 years.

ADJOURNMENT

Prior to adjourning, the Board was advised that they would be notified via email if the August 24, 2017 meeting was to be cancelled. Mr. Siesta commented that he would be out of town for the August 24th meeting. Chairman Garcia requested that the Board members contact the Board Secretary when they are not planning to be present for a Board meeting.

With no other matters to be brought before the Planning Board, Chairman Christopher Garcia **adjourned** the regular meeting of August 3, 2017 at 8:50 p.m. on a **motion** made by Andrew Gargano, with a **second** by Linda Connolly.

Approved: September 7, 2017

Respectfully submitted by,

Tonya E. Cubby, Secretary