

**TOWNSHIP OF WEST MILFORD  
PLANNING BOARD**

**MINUTES**

**August 27, 2020**

**Regular Meeting**

**Via Zoom**

Chairman Christopher Garcia opened the August 27, 2020 regular meeting of the West Milford Planning Board, held via Zoom, at 7:00 p.m. with a reading of the Legal Notice followed by the Pledge of Allegiance.

**ROLL CALL**

**Present:** Linda Connolly, Councilwoman Ada Erik, Warren Gross, Robert Nolan, James Rogers, Geoffrey Syme, Glenn Wenzel, Chairman Christopher Garcia, Alt # 1 Michael DeJohn, Board Attorney Thomas J. Germinario, Board Engineer Paul Ferriero, Board Planner Jessica Caldwell.

**Absent:** Steven Castronova, Alt #2 Michael Chazukow,

Chairman Christopher Garcia requested Michael DeJohn to sit on the Board for Steven Castronova, and advised that a quorum was present to hold this regular meeting.

**PUBLIC PORTION**

The public portion was opened by Chairman Christopher Garcia. With no members of the public wishing to address the Board, the public portion was **closed** on a **motion** by Linda Connolly with a **second** by Glenn Wenzel.

**APPLICATIONS**

**FADWA BARAKAT**

**Major Soil Fill Permit #PB-07-19-01**

Block 13001; Lot 4

37 Hearthstone Drive; R-2 Zone

**Seeking:** Major Soil Fill Permit approval for previously importing 533 cubic yards of soil for the purpose of re-grading the subject property for an in-ground pool.

The applicant, Fadwa Barakat, was in attendance and indicated that her engineer, William Darmstatter, P.E., P.L.S., was present to provide testimony, in addition to her contractor, Jeffrey Stolarik. Mr. Darmstatter was subsequently sworn in by the Board Attorney, Thomas Germinario, to testify on behalf of the applicant, and after presenting his qualifications to the Board, was accepted as expert witness.

Mr. Darmstatter testified that the soil that had been imported following the construction of the inground pool had already begun stabilization. He did not know the exact depth of the soil that was imported, but had calculated the amount from prior topography of the site. The soil fill is staggered from 0 to 4 feet in all directions, for a total of approximately 533 cubic yards. With regard to the number of truck loads, Mr. Darmstatter estimated that there were about 16 trucks transporting the fill.

Jeffrey Stolarik, the applicant's contractor, was sworn in by the Board Attorney, and testified that the information provided by Mr. Darmstatter was accurate. Mr. Germinario referred to the Environmental Commission's memo regarding the steepness of the slopes and the recommendation for more stabilization. Mr. Darmstatter noted that the fill has been stabilized with grass. With regard to steepness, he observed that on one side of the site, the slope is a 2:1 ration, or steeper. He advised that the applicant would agree to use additional methods for stabilization. Board member and Environmental Commissioner Jim Rogers, suggested that the applicant consider a rain garden or additional plantings and Mr. Darmstatter stated that the applicant will install whatever plantings the Board recommends. Board member Geoffrey Syme inquired why Mr. Darmstatter had estimated the amount of soil that had been imported, and noted that the contractor should have the records of the total amount of soil that he brought to the site. Mr. Stolarik confirmed that according to his records there were 20 trucks transporting the soil, with each one containing approximately 23 to 25 tons. He stated that the fill came from excavation for a swimming pool in North Caldwell. Mr. Germinario inquired whether the applicant would restore the tree line at the edge of the fill, and Mr. Darmstatter responded that if the Board requires trees to be planted on the slope, they will comply, although there was no record of trees along Macopin Road. He observed that the area from Macopin Road up to the

applicant's property was the path that the trucks used for trucking the soil. Mr. Germinario confirmed with the Board that trees should be planted on the slope that was used as a truck lane, and also along the former treeline near Macopin Road. Board member Glenn Wenzel inquired why the applicant's contractor failed to get a soil permit to import the soil. Board Engineer Paul Ferriero noted that the pool was constructed and grading was completed, but it appeared that additional fill was brought in to level the yard. Mr. Stolarik testified that they had to dig to get to virgin soil at the site, so they imported additional fill from the North Caldwell site and added it to the sloped portion. Mr. Ferriero clarified that the construction was completed at the site, but the main issue was the extra soil that was imported to the site to soften the steepness of the slope. Mr. Stolarik stated that he imported the soil under the guidance of Glenn Van Olden of the Hudson Essex Passaic Soil Conservation District (HEPSCD). Referring to the HEPSCD Certificate of Compliance, Chairman Christopher Garcia inquired if this represented an approval of the soil movement project. Mr. Ferriero noted that what the applicant had submitted was a standard Certificate of Compliance. Mr. Syme inquired whether a plan was submitted to the HEPSCD, and Mr. Ferriero explained that soil conservation would usually review a plan, and approve it following inspections. Mr. Darmstatter stated that his firm had prepared a plan and he understood that it had been approved.

Chairman Garcia requested clarification on establishment of stabilization of the soil. The applicant and property owner, Fadwa Barakat, was sworn in by the Board Attorney and provided testimony regarding the site. She testified that there was temporary stabilization with the grass that was planted approximately 2.5 years ago. She was under the assumption that this was all they were required to do per HEPSCD. Mr. Germinario inquired what would be required for permanent stabilization, and Mr. Ferriero observed that the temporary seeding planted more than 2 years ago was most likely established sand stabilization had been achieved. He suggested that HEPSCD be requested to perform a follow-up inspection to confirm that stabilization of the soil has occurred. Board member Linda Connolly inquired about the last date when the soil was brought to the site, and Chairman Garcia noted that the documentation indicated March 2018. Mr. Wenzel remarked that there had been no testing of the soil, no confirmation about the quality of the soil, zoning violations were issued, and now the application is before the Board. He found it very problematic that there was a soil movement project that was completed without consideration of the requirements that should have been followed. Noting that this was not the first time that the Board had soil permit applications after the projects had been completed, he was not satisfied that the appropriate steps had been taken by the applicant and her contractors.

Board member Warren Gross confirmed that the soil was stabilized based on his visit to the site earlier that day. Mr. Ferriero opined that testing of the soil is usually not required, and he referred to prior soil permit applications that were before the Board. Although it is the property owners' responsibility to insure that the soil has no contamination, it may be difficult to make a determination. He offered to visit the site in North Caldwell that the soil originated from, and if it is in an industrial area, samples can be taken. Mr. Germinario stated that this matter could be delegated to Mr. Ferriero to determine if it is warranted. Board member Robert Nolan inquired about the status of the pool if the Board denied the major soil movement permit and the soil was removed, and Mr. Ferriero noted that the pool was approved and could remain, but the soil would have to be regraded and re-stabilized.

Chairman Garcia opened the hearing to the public, and the following addressed the Board: Richard Durgin, 45 Hearthstone Drive, was sworn in by the Board Attorney, and provided his testimony regarding the history of this matter. He noted that a complaint had been filed by him for the soil that was still being imported to 37 Hearthstone on January 7, 2019, which was after the March 2018 timeframe that the applicant indicated. He reported that there was 6 – 9" of dirt on the road where the trucks were coming from the site, and he referred to an email he received on January 8, 2019 from HEPSCD that detailed the amount of excess of soil that was brought to the site. He noted that a trench and sediment control fencing was to be installed. He expressed concern that the pool was constructed and no fencing was installed around the pool, which represents a safety/security issue. Mr. Durgin also maintained that there was a 14 ft drop from the edge of the soil near Macopin Road, and stated that 7 trees were lost that were located near the dirt pile. Ms. Barakat commented that she received a stop work order and could not complete the pool fencing, or any other work, with the exception of cutting the grass. Mr. Durgin estimated that there were 36 truckloads of soil contained on triaxles, which he calculated to be 890 cubic yards of soil fill. He testified that 7 trees were lost near the soil fill, and he alleged that a depth of 14 ft 4 in of soil fill was brought to the applicant's site. Mr. Germinario inquired how Mr. Durgin came to his depth estimation, and Mr. Durgin responded that he measured from

the road and also examined the height of the vegetative growth to the site. He noted that the site appears to be stable at this time, but reviewed for the Board his efforts to get the matter addressed by various entities in the Township. Mr. Durgin doubted the estimates of soil and soil depth included on the plan prepared for the applicant by Mr. Darmstatter. He testified that he measured from Macopin Road and that there is a 14 ft drop, not 1.5 ft, and expressed concern about erosion in the event of a major storm. Mr. Gross subsequently reviewed his findings during a site visit earlier that day, and did not encounter or observe any conditions that would be cause for concern.

Applicant Fadwa Barakat addressed the Board, stating that she wanted to do whatever the Board wanted to remedy the situation. She assumed that they were compliant with all regulations with regard to soil conservation, and was not aware of violations until she received notices and summonses. She requested the Board to grant the major soil movement permit and she will do whatever is required to comply with requirements of HEPSCD and the Township, but she wants to complete the pool project which includes grading the property, paver installation, and fencing. Mr. Ferriero recommended the areas the applicant referred to should be included on the revised plan. He also requested a fine grading plan with the fence included, and opined that HEPSCD had most likely seen just a rough grading plan. He noted that a determination about the tree and vegetation removal should be made, and suggested that shade trees be installed near the bottom of the site to assist in “re-knitting” the area. Mr. Darmstatter suggested meeting at the site to discuss the grading and other items that need to be included on the plan. Mr. Durgin reiterated his concerns and stressed that testing of the soil should be a requirement of Board approval.

With no further comments from the public, the public portion was **closed** on a **motion** by Ada Erik and a **second** by Warren Gross.

Chairman Garcia made several comments regarding the concerns of the neighboring property owner, and acknowledged that all parties involved are seeking a satisfactory conclusion to the matter to avoid any future problems. Mr. Ferriero suggested that if the Board approves the major soil movement permit, it should be subject to a revised plan and include the work that remains to be completed. Chairman Garcia noted that the Board will not be reviewing the revised plans since this will be the responsibility of the Board/Township Engineer [during resolution compliance], and he expressed concern about the composition of the soil. He felt that it was prudent for the Board to require soil testing as part of the approval, and Mr. Ferriero concurred. Mr. Germinario requested that Mr. Ferriero prepare soil testing protocols, and Mr. Ferriero confirmed that he will work with Mr. Darmstatter on this. Mr. Rogers inquired if the matter can be tabled until answers on the matters in questions can be provided to the Board. Mr. Germinario advised that if the permit is not approved, the stop work order was still in effect and nothing can be done to correct or complete the project. He noted that the Board can approve the permit subject to the following conditions: soil testing, stabilization of the soil, fine grading and fencing. To Mr. Syme’s comment that no revised plan was available for the Board to review, Mr. Ferriero observed that there wouldn’t be much in the way of material changes in the revised plan, and the applicant will have to comply with all the conditions [stated in the resolution] required by the Board, as well as those included in the revised plan. Chairman Garcia inquired about the curb cut on Macopin Road to the applicant’s site, and Mr. Stolarik remarked that it was an existing curb cut from the builder of the development who used the site as a construction road approximately 20 years ago. Mr. Stolarik utilized the access area for trucking the soil to the applicant’s site, but he maintained the area was filled with overgrowth and vegetation, and no trees were removed for the trucking operation.

Mr. Germinario reviewed the conditions per recommendation of the Board Engineer:

The road from Macopin Road to be re-vegetated

Native trees should be planted

Stabilize the east slope of the pool area

HEPSCD to conduct a followup inspection of the site

Revised plan to be submitted which will include fine grading and fencing

Inspections by the Board/Township Engineer

Soil testing per protocols established by the Board Engineer in cooperation of the applicant’s engineer, William Darmstatter.

Mr. Nolan commented about soil that was reported to be too high by some of the trees near the site, and Mr. Germinario requested the Board Engineer to inspect the site for any issues. With regard to the mature trees that have fill placed too far up the trunk, Mr. Ferriero suggested that the applicant remove the soil from around the tree trunks and create a well around the trees. Mr. Darmstatter and Ms. Barakat both stated that they were agreeable to all the conditions stated by Mr. Germinario.

A **Motion** was made by Ada Erik, with a **second** by Warren Gross, to **approve** the Major Soil Fill Permit application for Fadwa Barakat, PB #07-19-01, Block 13001; Lot 4, 37 Hearthstone Drive, with the conditions stipulated by the Board and reflected in the resolution memorializing the decision.

**Roll Call**

**Yes:** Michael DeJohn, Ada Erik, Councilman Warren Gross, Robert Nolan, James Rogers, Chairman Christopher Garcia.

**No:** Geoffrey Syme, Glenn Wenzel.

**Abstain:** Linda Connolly.

**Motion approved.**

Mr. Germinario advised that he will prepare the resolution and have it ready for the Board to approve at the September 24, 2020 meeting. Several Board members expressed their concerns about the number of applications that come before the Board after the work has been done without permits. Mr. Germinario and Mr. Ferriero concurred that it is a problem, but not unique to West Milford, although the size and rural character of the municipality may contribute to more cases such as this. Mr. Ferriero suggested public education measures, including reaching out to contractors and sending notices about requirements may help to alleviate some of these cases. Mr. Wenzel inquired about licensing the soil movement [excavator] contractors, and Mr. Ferriero referred to a “dirty dirt” legislation recently approved that requires a State license for soil movement operations. He recommended that a list of excavator/contractors be compiled so that notices can be sent to them about the permit requirements for soil movement activities. Mr. Germinario advised that the Planning Board is not an enforcement agency, and the Board can only make a recommendation to the Governing Body. He noted that other towns he has worked for have applications before the Boards for “after the fact” activities, and it is not just a problem experienced in West Milford.

**MEMORIALIZATIONS**

**Resolution No. 2020-10**

**ENVIRONMENTAL CONSTRUCTION CO.**

**Extension of Minor Subdivision & Bulk Variance Approval #PB-01-18-02**

Block 4106; Lot 1

99 Long Pond Road; LR Zone

**Granted:** Extension of Time to file deeds for the approved Minor Subdivision and Bulk Variance for the subdivision of an existing lot into two individual building lots for proposed single family dwellings.

Mr. Germinario noted that the applicant had been working to meet resolution compliance, but the reviews were not completed in time for the applicant to have the deeds filed before the expiration date, so an extension was in order.

**Motion** made by Ada Erik with a **second** by Geoffrey Syme to approve Resolution No. 2020-10 for an Extension of Time to file minor subdivision deeds for the Environmental Construction Co.

**Eligible to Vote Roll Call**

**Yes:** Linda Connolly, Michael DeJohn, Councilman Warren Gross, Robert Nolan, James Rogers, Geoffrey Syme, Glenn Wenzel, Chairman Christopher Garcia.

**No:** None.

**Motion approved.**

**NEW OR ONGOING BUSINESS |**

**[TC1] Highlands Economic Development Study** – Jessica Caldwell, Board Planner, provided an update to the Board on the Highlands Economic Development Study grant project. She had the surveys prepared based on meetings with the Master Plan Committee, and they have been sent/distributed to the various committees and community groups for dissemination. The surveys will be made available online on the Township and Library websites, and she requested that the Board members reach out to as many entities as possible for responses, including business owners, residents and visitors. Once the responses have been compiled, she will meet with the Master Plan Committee and proceed with the plan.

**ORDINANCES FOR INTRODUCTION** – None.

**ORDINANCES REFERRED FROM COUNCIL** – None.

**BOARD PLANNER'S REPORT** – None.

**BOARD ATTORNEY'S REPORT** – None.

**BOARD ENGINEER'S REPORT** – None.

### **MISCELLANEOUS**

#### **Invoices**

The Board professional's invoices for the month of July were **unanimously approved** on a **motion** by Geoffrey Syme with a **second** by Robert Nolan.

### **MINUTES**

The Minutes from the July 23, 2020 regular meeting were **unanimously approved** by all members present at the meeting on a **motion** by Geoffrey Syme and a **second** by Glenn Wenzel.

### **CORRESPONDENCE RECEIVED:**

The following correspondence items were reviewed by the Board:

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

1. None.

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

1. NJDEP Suspected Hazardous Discharge notice, dated August 8, 2020, regarding a fallen pole top transformer that caused 20 gallons of UNK PCB transformer oil to spill on the soil and into a storm drain in the vicinity of 20 Taft Road, Block 1608; Lot 14.
2. NJDEP Suspected Hazardous Discharge notice, dated August 8, 2020, regarding a transformer oil spill in front of 28 Terrace Road, Block 7304; Lot 5, with clean-up pending.
3. NJDEP Suspected Hazardous Discharge notice, dated August 8, 2020, regarding the removal of a 550 gallon UST at 5 Glennon Road, Block 10402; Lot 4, with clean up pending.
4. Notification of a Freshwater Wetlands General Permit application being submitted for 76 Carmel Road, Block 1101; Lot 43.
5. NJDEP Suspected Hazardous Discharge notice, dated August 13, 2020, regarding a Non-PCB transformer oil spill that entered a storm drain in front of 28 Terrace Road, Block 7304; Lot 5, with clean-up completed.
6. NJDEP Suspected Hazardous Discharge notice, dated August 14, 2020, regarding a Non- PCB transformer oil spill in front of 42 Terrace Road, Block 7303; Lot 9, with clean-up completed.
7. NJDEP Suspected Hazardous Discharge notice, dated August 14, 2020, regarding a Non- PCB transformer oil spill in in vicinity of Macopin Rd, Highlander Dr and Gould Rd, (Block 10202; Lot 3 and 10203; Lot 1) with clean-up pending.
8. NJDEP Suspected Hazardous Discharge notice, dated August 14, 2020, regarding a Non- PCB transformer oil spill in the vicinity of Newark Rd and Maine Rd, Block 1211; Lot 7.02, with clean-up completed.

#### **Miscellaneous Correspondence**

1. Hudson Essex Passaic Soil Conservation District certification of a soil erosion and sediment control plan, dated August 17, 2020, for the Township of West Milford Farrell Soccer Field Rehab Phase II, Lycosky Drive, Block 6002; Lot 28.02.

### **ADJOURNMENT**

Prior to adjourning, the Board members reviewed the upcoming meeting dates for September 3 and 24, 2020, and the Board concurred that the September 3, 2020 meeting should be cancelled. The next regular meeting will be scheduled for September 24, 2020.

With no other matters to be brought before the Planning Board, Chairman Christopher Garcia **adjourned** the regular meeting of August 27, 2020 at 9:15 p.m. on a **motion** made by Robert Nolan with a **second** by Glenn Wenzel.

Approved: September 24, 2020

Respectfully submitted by

Tonya E. Cubby, Secretary