

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

September 22, 2011

Regular Meeting

In the absence of Chairman Andrew Gargano, Vice Chairman Geoffrey Syme assumed the position of Chair. The Regular Meeting of the Planning Board was opened at **7:35 pm** by Acting Chairman Geoffrey Syme with a reading of the Legal Notice, followed by the Pledge of Allegiance.

ROLL CALL

Present: Mayor Bettina Bieri (8:05), Linda Connolly, Christopher Garcia, Robert Nolan, Douglas Ott, Geoffrey Syme, Councilman Philip Weisbecker, *Vacancy*, Alternate Steven Castronova, Board Attorney Thomas Germinario, Esq., Board Engineer Paul Ferriero, P.E., Board Planner Charles McGroarty, P.P.

Absent: Chairman Andrew Gargano, Alternate Michael Siesta.

Board Alternate Steven Castronova was requested to sit on the Board to fill the vacant seat.

PUBLIC PORTION

Acting Chairman Geoffrey Syme opened the Public Portion of the meeting. The following addressed the Planning Board about matters of concern:

Maria Elena Grant – 1 Yearling Trail, addressed the Board regarding the newly introduced ordinances that imposed additional requirements on lake association members when applying for various local permits. She urged the Board not to recommend adoption of these ordinances. Mr. Germinario requested that those present who had comments on this matter to please hold those comments until this matter is discussed later in the meeting.

Richard Randazzo, Wooley Road, addressed the Board regarding his recommendations to amend the current Township well ordinance. He subsequently distributed a copy of a letter to the Board, and Mr. Germinario requested that he hold comments on the well testing issue until the completeness hearing on Braemar.

Doris Aaronson, 19 Bearfort Road, addressed the Board with regard to water availability in the Township, maintaining that the Township is overdeveloped by 30% in relation to water supplies. She referenced the M2 Associates report, the Malcolm Pirnie Study, the Highlands Council, and an NJDEP engineering report that purportedly stated that West Milford is overdeveloped for residential use, and that only storage type businesses would be suitable because of the limited water that would be required to maintain the businesses. She indicated that the center of town had granite and gneiss bedrock, which was dense and poorly fissured, with little water draining into the aquifers, in addition to the poor soil conditions and steep slopes. Ms. Aaronson cited a statement by [Bill Wolf], an official with the DEP, who maintained that 94% of the water in West Milford did not go into the wells. She opined that the Malcolm Pirnie Study concluded that the only development that can be supported in West Milford are wells that are interconnected, and raised the issue of Pinecliff Lake wells that have gone dry during droughts. She requested that the Planning Board consider the lack of water that will result in approximately ten years.

With no further comments from the public, the Public Portion was **closed** on a **motion** by Councilman Philip Weisbecker and a **second** by Steven Castronova.

PRESENTATIONS – None.

APPLICATIONS

PENDING APPLICATIONS - None.

EXTENSIONS OF TIME

JACK LEVKOVITZ (VILLAGE ON RIDGE) Section II

Amended Final Major Subdivision #0510-1744C

Block 5201; Lots 16, 19 & 20; Block 5301; Lot 1; R-3

Ridge Road; R-3 Zone

Seeking: Extension of Time for Amended Final Major Subdivision Approval and several associated conditions due to delays in securing other governmental agency approvals required per Planning Board Resolution No. 2010-20.

Board Member Robert Nolan recused himself from this matter, stating that he lives a block away from the proposed subdivision.

Robert Simon of Herold Law Offices, attorney for the applicant Jack Levkovitz, advised the Board that the applicant was seeking an Extension of his Final Amended Subdivision approval, which would expire on December 6, 2011 subject to certain conditions being met by August 4, 2011. These conditions included a viable water supply and sewer treatment system, affordable housing, posting bonds, and compliance with the existing well ordinance to insure adequate water supplies. Mr. Simon noted that the resolution stated that an extension was possible if the applicant had shown due diligence. He advised that in the past year the applicant had met with Matt Mulhall, the

Township hydrogeologist, and had also met with the Board/Township Planner, Board/Township Engineer, and the Township Council in order to effectuate the stipulations of the resolution.

Kevin Boswell, P.E., of Boswell Engineering, appeared as expert witness for the applicant and was sworn in by Thomas Germinario, Board Attorney, and qualified himself for the Board. He testified that he was present as a planner and project engineer for the applicant, and also as a potential investor in the project. Mr. Boswell testified that the applicant had requested the Township Council to permit him to apply for NJDEP approval for a private community water system. The support of the Council was essential in this matter, and after meeting with the Township Council and the 10 existing homeowners in the subdivision, an ordinance had been introduced by the Township in August. Mr. Boswell noted that a \$250,000.00 cash bond is required, in addition to a maintenance agreement for the system, as well as the design parameters for the entire subdivision with the additional connection of the 10 existing homeowners. The 10 homeowners who would be connected to the new system would remain with the MUA until the new system is fully operational, Mr. Boswell also noted that the applicant would be funding the deficit of the remaining homes that would be on the system, until they are built, resulting in the lower rates for the 10 homeowners.

Mr. Simon was requesting a 12-month extension of time for compliance of the applicant's prior approval, and Mr. Boswell concurred, stating that he believes the applicant can secure the necessary permits, or at least have an imminent timeline for the issuance of the permits. Once approved, the applicant would assume the operation of the two "lift stations" for two years. Mr. Simon requested a one-year extension pursuant to NJSA 40:55D-52a, stating that the applicant has shown good faith in obtaining the required approvals. Chairman Gargano inquired whether the Planning Board had any questions for the applicant or his professionals, and the Board indicated that they did not. Thomas Germinario, Board Attorney, advised that the Board had actually approved three one-year extensions, and the applicant was not entitled to another extension under the MLUL. Mr. Germinario addressed the Board, recommending a "tolling of time" for the applicant due to the matter being the subject of litigation for over a year, the rescinding and then reinstatement of the Highlands, which took more than a year to resolve. He noted that in March 2009 the Board had no other choice but to deny the extension because a Highlands Exemption did not exist at the time. Mr. Simon cited case law on a number of land use applications where tolling was applied, and referenced NJSA 55D-21. He noted that he estimated 18 months in tolling time applies in this matter, but the applicant was only requesting a 12-month extension, until August 4, 2012 to meet the specified conditions, and to December 31, 2012 for final subdivision approval.

The following members of the public addressed the Board on this matter:

Doris Aaronson, 19 Bearfort Road, advised that she was a trustee of Pinecliff Lake Association, and noted that both Eagle Ridge and Valley Ridge failed the well tests and Lisa Jackson of the DEP denied the well permits. Mr. Germinario inquired what the relevance is to the Village on Ridge application, and Ms. Aaronson replied that there were insufficient water supplies near the Village on Ridge development. She stated that various developments may sustain the well tests now, but in ten years there will not be sufficient water resources for the residents. Mr. Germinario commented that there are features of the well test that address future water needs, and advised that the Board cannot request the applicant to go beyond the requirements of the current ordinance. Ms. Aaronson replied that there were developments that do not have adequate water. With regard to sewer connections, she stated that the treatment plant for that development has been deficient for years. She was also involved in testing of Belchers Creek and the testing revealed high levels of bacteria, with over 400% greater than the acceptable limit for phosphorous, adding that the treatment plant is releasing bacteria and phosphorous into Belchers Creek, Pinecliff Lake and Greenwood Lake. She closed by saying that she had serious concerns about 60 additional homes being connected to the deficient sewage treatment plant at Old Milford Estates.

With no further comment on this matter, the public portion was **closed** on a **motion** by Councilman Philip Weisbecker with a **second** by Steven Castronova.

Mayor Bettina Bieri apologized for arriving at the meeting late and noted that she missed the beginning of the testimony and inquired whether she would be able to vote on the extension. Neither Mr. Germinario nor Mr. Simon had a problem with her voting. She then inquired whether the Board was required to provide an extension, and referred to the resolution that stated the applicant had shown due diligence in acquiring the proper approvals, and would this justify the extension approval for "good cause?" Mr. Germinario explained that the tolling would apply based on the limits of the extension itself. Mr. Boswell assured the Board that bonds would be posted and permits should be in line. Linda Connolly inquired whether this could be limited to the last extension for the applicant and Mr. Germinario replied that any further extension would have to show good cause and a major event would have to take place beyond their control. Mayor Bieri stated that she wanted to go on record that she initially voted against this application because of the water and sewer issues, but the Board approved the project based on the applicant proving that he has been diligent in moving forward with the required permits and procedures.

Motion by Steven Castronova with a **second** by Councilman Philip Weisbecker to **approve** the extension until August 4, 2012 and December 31, 2012 for Village on Ridge Amended Final Subdivision.

Roll Call:

Yes: Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Christopher Garcia, Robert Nolan, Douglas Ott, Councilman Philip Weisbecker.

No: Acting Chairman Geoffrey Syme.

NEW APPLCATIONS

**TRIPLE T CONSTRUCTION, LLC
Preliminary Site Plan #PB-03-11-01
Bulk Variance**

Block 6002; Lot 29
280 Marshall Hill Road; LMI Zone

Seeking: Preliminary Site Plan and Conditional Use Approval to permit the outdoor storage of boats.

Richard Saunders, Esq., attorney for the applicant Triple T Construction, LLC and owner Scott Ridings were present for the Board hearing. Mr. Saunders advised that the application would be bifurcated so that this boat storage portion of the application could be heard prior to the Board professionals declaring the remainder of the application complete. He explained that the boat storage was a timely matter due to the agreement that the applicant had with a marina and the necessity for the boats to be stored prior to winter. Mr. Saunders advised that the owner did not intend to complete any of the proposed site work at this time, but seeks to attain Board approval for a demarcated area to store boats. He noted that they would not be needing any variances and then proceeded to provide details of the plans. Owner Scott Ridings, 280 Marshall Hill Road, was sworn in by Board Attorney Thomas Germinario, and proceeded with testimony regarding the proposed use of the site with regard to boat storage. He testified that the boats would be brought in from Greenwood Lake, ranging in size from jet skis to 20-foot boats. Per his agreement with the marina, the boats would be brought in by personnel from one marina, with no one else having access to the site. Mr. Saunders inquired whether shrink-wrap would be used, and Mr. Ridings advised that some boats arrive with it on and some will need it installed at the site, adding that all of the material is recycled in a container and removed from the site. Mr. Saunders referenced the Police Dept. memo of Sept. 15, 2011 regarding access from Marshall Hill Road, and Mr. Ridings stated that this driveway is not used on a regular basis and will remain only for emergency ingress and egress. With regard to the Police Dept.'s concern about narrow aisles between the boats, Mr. Ridings testified that the aisles would be maintained at a minimum of 10-foot aisles.

With regard to the remainder of the comments provided by the Board professionals or Township staff, Mr. Ridings agreed to the suggested signage, grading of the driveway, painting of fire lanes, and installation of a Knox box. Mr. Germinario inquired if the applicant would be installing the signage and Knox box at this time or after the remainder of the application is approved, and Mr. Saunders replied that they would comply at this time if the Board required it, but they preferred to wait until the rest of the application is heard. Mr. Ridings testified that no one is occupying the existing building at this time and there is no electricity or other functioning utilities at present. When asked by Board member Robert Nolan whether the boat storage area will be paved or gravel, Mr. Saunders advised that one part of the ordinance requires gravel, which would increase the impervious cover, and would not be permitted under the Highlands, so the intent is to keep it as soil in that location. Mr. Ridings noted that the soil has a high clay content and is very stable, adding that he has not had a problem since he bought the site in 2009. Mr. Ridings testified that this area would only have boat storage, which would have boats stacked horizontally. Mr. Nolan inquired about possible mud issues during wet weather and whether there would be leaking from the engines. Mr. Ridings testified that all the boats will be winterized at the marina. Mr. Saunders advised that boats have been stored at the site for several winters and that he had received zoning approval for the storage, but then was advised that he needed site plan approval for the remainder of his operations. Councilman Weisbecker inquired whether he intended to put millings down, and Mr. Ridings replied that he would not. Board Planner Chuck McGroarty inquired if the 25,000 sq. ft area was fenced and Mr. Ridings replied that three sides are fenced, but there is no fencing in the front. Mr. McGroarty noted that this item is missing on the plan. Upon reviewing the plans, Mr. Ridings noted that the whole site is fenced around the perimeter, and Mr. McGroarty inquired how the boat storage would be delineated from the remaining site. Mr. Saunders offered to plant trees as a buffer, to which Mr. McGroarty responded that the ordinance already requires this. Board Engineer Paul Ferreiro expressed concern that the boats would encroach on the 25-foot property line buffer. Mr. Ridings suggested installation of a post with a chain to delineate the boat storage area and keep the boats from extending into the 25-foot buffer. With regard to lighting, Mr. Saunders advised that the lighting would be discussed with the remainder of the preliminary site plan, but that the applicant would agree to timers on the lights. It was determined that lighting would not be necessary at this time, and that the boat storage would only occur during the daylight hours, with this noted as a condition of approval.

Patrick McClellan, P.E., engineer for applicant Triple T Construction, was sworn in, qualified himself for the Board, and was accepted as expert witness. Mr. McClellan testified that the layout for the boat storage was fairly conservative, with areas delineated to 10 ft. x 25 ft. each, and his calculations were based on 100-boat storage capacity of various sizes. With regard to the required parking spaces, he calculated 1 space per 10 boats, or 10 spaces plus one for an employee per Township ordinance. He advised that there will be no individual boat owners at the site. With

regard to Paul Ferriero's report of September 20, 2011, he clarified that the applicant was seeking preliminary and final site plan approval for the boat storage, and that he would prepare the final site plan for the boat storage if the Board grants preliminary approval. He reviewed the aerial photos of the site from 1966 through 2007. These were entered into the record as Exhibit A-1 (4 photos). Mr. McClellan noted that the area where the boats would be stored has been cleared since 1970 and was used for vehicle storage. With regard to Mr. Ferriero's comments about compaction issues, Mr. McClellan advised that the boats have been stored for two years at the site and there have been no issues. He noted that a Highlands exemption would not be necessary since the surface was non-vegetative, and site circulation would be addressed with the next phase of the site plan. When Councilman Weisbecker inquired about safety concerns and the need for fire equipment to have access to the area, a decision was made to include a condition upon approval that the lanes be a minimum of 10 feet. Mr. Ferriero commented that if the site is to remain as is and not include millings and gravel as indicated on the plan, then the surface has to be suitable for maintenance. He subsequently requested that the note on the revised plans about gravel and millings be removed. Mr. McClellan testified that the site has gravel present, and that maintenance would be needed, but no new gravel would be installed. Mr. Ridings commented that even with the extremely wet spring in 2011, there were no problems. He also noted that plowing in the winter would be done in the lanes between the boats. Councilman Weisbecker inquired whether empty boat trailers would be stored on the site, and Mr. Ridings replied that some trailers would be stored there with the boats. Mr. Nolan proposed that the hours of operating the boat storage would be limited to the hours of 8am to 6pm. The Board concurred with this.

Following discussion and clarification of certain matters, Mr. Germinario reviewed the conditions for boat storage approval that were agreed upon by the applicant:

- All shrink-wrap after its use in boat storage shall be recycled.
- All boats will be delivered to the site by marina operators, not by individual boat owners, and only marina operators will have access to the boat storage area.
- No boat repair or maintenance work shall be performed on the site. All boats to be stored on the site shall be serviced and winterized, with all fluids removed, prior to being delivered to the site.
- No rack storage of boats is permitted.
- The boat storage area shall be delineated to the satisfaction of the Board Engineer.
- No lighting shall be used in connection with the boat storage area. Boats shall be moved only during daylight between the hours of 8 a.m. and 6 p.m.
- A "final site plan" drawing shall be submitted that shows the existing conditions on the site and the "approved" boat storage area. The information on the drawings about the proposed additions, parking areas, etc. related to other aspects of the original application shall be removed from the drawing.
- A minimum 10-foot traffic aisle shall be maintained in the boat storage area, sufficient for access by emergency vehicles.
- No millings or other impervious materials shall be placed in the storage area. Notes on plans regarding placement of millings shall be removed.
- The driveway from Marshall Hill Road shall be gated and locked and shall be used for emergency access only. Keys to the gate shall be provided to Township emergency departments. In no event shall this driveway be used for moving boat trailers.
- The driveway from Lycosky Drive shall be repaved and clearly painted along its entire length with "No Parking Fire Lane." Signage shall be posted along the entire driveway reading "No Parking Fire Lane," with the distance between signs to be determined by the Township Fire Marshal.
- The Applicant shall install posts and chains or some other type of fencing as a visual demarcation of the subject boat storage area and to avoid any encroachment into the 25-foot established setback.
- The following construction mitigation measures are hereby made applicable to this project:
 - A. Elimination of anti-vandalism horns on equipment.
 - B. Work hours shall be limited from 8:00 a.m. to 6:00 p.m. Monday through Saturday. No work shall take place on Sundays or holidays except on an emergency basis. The holidays, which shall be observed for purposes of this condition, shall be New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. The Applicant shall maintain personnel on site to whom incidents of noise disturbance shall be reported and said personnel shall be authorized to take measures to minimize said disturbances. As used in this section, "work" shall include both interior and exterior construction.
 - C. Anti-litter regulations shall be imposed on site.
 - D. The Applicant shall establish regulations for the safe and proper transfer and transport of fuel on site.

E. Tracking mats shall be located by the Hudson-Essex-Passaic Soil Conservation District and the Township Engineer in such places as to minimize the tracking of dirt and mud onto Lycosky Drive.

F. Clean up and wash-down of trucks and equipment shall be required before leaving the construction site.

G. Adequate provisions for safe control of employee parking including employees of the contractors and sub-contractors shall be required on site during construction.

H. During construction, all construction traffic shall enter and exit the site exclusively from Lycosky Drive.

I. Violation of any of these construction mitigation measures may result in a stop work order, which order shall remain in full force and effect until the condition is remedied to the satisfaction of the Township Engineer.

- Prior to disturbance of the subject property, the Applicant shall comply, to the extent applicable, with the provisions of Ordinance Chapter 460, "Soil Removal and Soil Fill."
- This approval is granted for the time period as set forth in the Municipal Land Use Law and will expire on 10/27/13.

This matter was opened to the public for comment. With no one present wishing to speak on this matter, the public portion was **closed** on a **motion** by Councilman Philip Weisbecker with a **second** by Steven Castronova.

Motion by Councilman Philip Weisbecker with a **second** by Chris Garcia to approve the boat storage portion of the Preliminary Site Plan Application #PB-03-11-01 for Triple T Construction LLC **with conditions** noted above.

Roll Call:

Yes: Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Christopher Garcia, Robert Nolan, Douglas Ott, Councilman Weisbecker, Acting Chairman Geoffrey Syme.

No: None.

COMPLETENESS DETERMINATION

BRAEMAR AT WEST MILFORD, LLC

(Greene Valley Estates)

Final Subdivision #0610-1910B

Block 10001; Lots 14, 19, 20, 23

Wooley Road; R-3 and R-4 Zones

Seeking: Completeness determination regarding Final Major Subdivision application for the subdivision of 17 residential building lots on Wooley Road.

Prior to the completeness determination hearing on the above matter, Board Member Linda Connolly recused herself from this matter and left the dais. Frank Regan, Esq., of Decotiis, Fitzpatrick & Cole, attorney for applicant Braemar at West Milford LLC, advised the Board that the applicant was present for the purpose of determining completeness of their final major subdivision application. He reviewed the history of the application, advising that preliminary major subdivision approval was granted in 2003, with an extension given in 2006 prior to the final 17-lot subdivision application being submitted. He noted that improvements have been made at the site including road infrastructure, drainage, and utilities. The current applicant, Braemar at West Milford, purchased the property in 2006 from Kerry Greene, with one house constructed on one lot, and one was 60% complete. He advised that his client has spent in excess of 4 million dollars on the project. Mr. Regan made note of the numerous correspondence that has transpired since 2006. With regard to water supply, Mr. Regan noted that well testing for adequate water supplies was completed in 2005 and was accepted by the Board Engineer at the time, but additional testing was required as a result of the 2007 well testing ordinance. He advised that one of the main reasons there was delay in moving forward with the project was the poor market conditions. He stated that the applicant had legitimate reasons for the delay in addressing the incompleteness of the final subdivision application and that his client maintains that he has made efforts to comply with the conditions imposed by the Board. With regard to subsequent correspondence on water testing, Mr. Regan was not sure that the applicant would be subject to additional well testing requirements, but they took steps to begin the process. Unfortunately, there were delays, and the well testing could not be completed, but he affirmed that his client is committed to complete the well testing required by the 2007 ordinance. Mr. Regan noted that there was a 4½ year gap between incompleteness and the submissions in the Fall of 2010. With regard to the DEP, he stated that all work required by the DEP had been completed, so the expired permit was not necessary, and the expiration of the Highlands Exemption is being appealed. Mr. Germinario inquired why the well testing was stopped if the applicant was prepared to move forward with the final subdivision application, and Mr. Regan noted a sequence of events and correspondence that transpired when the testing began, resulting in the process not being completed. Mr. Germinario advised that the application was not complete at this time because the aquifer testing was not completed. Mr. Regan advised the Board that the applicant was prepared to move forward, will submit all the necessary documents and will post a guarantee in order to proceed with the application. Mr. Germinario advised that there is no indication how long the Highlands issue will

take, and Mr. Regan requested that the applicant be permitted to continue with the well testing while they pursue the Highlands Exemption reinstatement. When Mr. Germinario inquired how long the testing would take, Mr. Regan was not able to provide a time frame. Mr. Germinario inquired if the well testing could be completed in 20 weeks and Mr. Regan replied that they would try to adhere to that schedule, adding that there are always variables that could delay completion of the testing, and referenced the recent severe weather conditions as an example.

Mr. Germinario asked the Township's Hydrogeologist, Matthew Mulhall of M2 Associates, to comment on his perception of the aquifer testing and the diligence on the part of the applicant to complete the testing. Mr. Mulhall advised the Board that applicant had intended to move forward with the testing, but major rain events occurred during the initial testing period, and no testing was done subsequent to this. He noted that numerous phone calls were received from adjacent homeowners advising that the monitoring equipment was installed for the testing over an extended period, and they requested that the equipment be removed since the testing had not continued. He also advised that, to his knowledge, none of the homeowners denied having more testing done, but they wanted the monitoring equipment removed due to their concerns about the data logging and concerns about what the information was being used for. Mr. Mulhall had also been informed that additional wells were being drilled. He noted that Maser requested to do three tests, although only two were required, adding that due to the change, another aquifer test plan submission was necessary so that the monitoring on the third well could be evaluated. Mr. Regan commented that he would have Maser Consulting contact Mr. Mulhall to address any issues with the additional testing. Mr. Germinario noted the 2005 aquifer testing performed by Maser, and inquired if the results indicated sufficient water supplies. Mr. Mulhall advised that there had been issues with the 2005 test results and since one well did not recover at that time, the results indicated that supplies may not be sufficient. He noted that the wells tested in 2005 would not satisfy the current well ordinance, adding that the ordinance does not permit wells in wetlands. With regard to the 2005 well testing, four days after the pumping stopped the water levels did not recover, and he stated that this indicated significant long-term problems. Mr. Regan advised the Board and Mr. Mulhall that he did not intend to represent that the current ordinance would accept the 2005 results, but since there was no ordinance in effect in 2005, the Board engineer, along with the hydrogeological consultant hired by the Board, reviewed and approved the test results. Councilman Weisbecker inquired if the applicant was testing the same wells, and Mr. Mulhall replied that this is what is in the plan, adding that these wells would not pass with the 2007 ordinance as the results from 2005 seem to indicate an extremely limited aquifer source. He advised the Board that he has not seen a new plan that includes additional testing and he re-clarified for the Board what had transpired: in April 2011 the aquifer testing was due to commence, major rain events delayed the testing, his discussions with Maser revealed that two tests were planned for the northern portion and Maser was informed that they were required to submit a revised plan. The data logging sat in the residential wells for three months, but no testing took place. Councilman Weisbecker inquired the reason that the applicant ceased the testing process, and Mr. Regan advised that there were a number of reasons that the testing was stopped, including the receipt of the notification that the Highlands exemption had been lost, as well as the excessive rainfall that was prevalent during this period. Mr. Regan stated that the applicant intended to complete the testing as soon as possible, but weather conditions were a factor, as well as the need for the Board to make a determination on the status of their project. With regard to the Letter of Interpretation (LOI), Mr. Regan advised that the applicant contends that an NJDEP certification was necessary for the work to be completed, but since the work has been done, the LOI was no longer required. Mr. Germinario informed the Board that the site included modified transition areas, and that the DEP ruled that the wetlands were re-classified from 50 to 150 feet and the Transition Area Waiver had expired, so work is not permitted within the 150-foot buffer without further approval. Paul Ferreiro reviewed the site and transition area requirements, and noted that any clearing on certain lots would be problematic without an extension. He explained the difference with wetland buffers under the Highlands regulations as opposed to those under DEP regulations, noting that if not exempt, a 300 foot buffer is required, adding that if the work under the averaging plan was not done before the expiration date, those affected areas cannot be cleared. Mr. Ferreiro advised that the site was under the DEP regulations with an exemption, and the buffer would only be 150 feet, but with the expiration of the Transition Area Waiver, another permit will be needed if the applicant is determined to be exempt from the Highlands regulation. Mr. Regan advised the Board that the applicant contends that the Highlands Council erroneously issued the expiration letter based on the LOI expiration, but Highlands did not inquire whether the work had been completed under the permit, and therefore, the applicant is appealing the decision of the Highlands. Mr. Ferreiro commented on the terminology used and noted that the document referred to should be called a Transition Area Permit, adding that if the DEP did not rescind the Highlands Exemption expiration, all work had to cease. With regard to monitoring the neighboring wells, Councilman Weisbecker inquired if the applicant was willing to reinstall monitoring equipment in the wells on adjacent properties, and Mr. Mulhall advised that the ordinance only requires three adjacent wells to be monitored, but four separate residents requested monitoring, and they want the monitoring to continue if the well testing resumes.

Ralph Loveys, one of the principals of Braemar at West Milford LLC, the applicant and owner of the subject property, was sworn in and provided testimony on the matter. Mr. Loveys advised that the applicant's company was in existence for 50 years as a property management firm, and he has personally been involved in property development for over 30 years. With regard to the Transition

Area Waiver/Permit, he advised that Braemar could adjust their project to the 150 foot buffer requirements under the Highlands and he understands that no work could be done in this buffer area. Mr. Germinario inquired whether their conservation easement could be adjusted, and Mr. Loveys replied in the affirmative. Mayor Bettina Bieri inquired whether this would affect the existing homes, and Mr. Loveys advised that Lot 19 had a completed residence that sat on its own lot, and if included in the subdivision, would not change the existing boundaries. He noted that the Township issued permits for the two houses/lots because they sat on individual lots, and the wells and septic systems were in place. He testified that one of the dwellings was complete, and there was no reason that the house on Wooley Road, Lot 19, could not be issued a Certificate of Occupancy, adding that Braemar pays \$21,000. in taxes on the property. When questioned by the Mayor as to the reason that the C.O. was not requested prior to this, Mr. Loveys advised that the bank was requiring the C.O. since the house is completed and financing was being terminated. He added that they had applied to the Health Department for a C.O. and were working on well testing requirements, but there was not much urgency until recently. He also noted that the other dwelling constructed on Virginia Lane had been vandalized numerous times, but the Wooley Road site had not been compromised. Mayor Bieri inquired about a time frame for meeting completeness requirements for an application, and Mr. Germinario advised that although there was nothing specific about applications that sit for long periods of time, he did not agree with Mr. Regan that an application could sit inactive for any length of time. In this case, this application sat for 4 years and did not come before the Board.

Mr. Germinario inquired from Mr. Mulhall if the applicant could complete the aquifer testing in a 20-week period, and Mr. Mulhall advised that this was feasible. Mr. Germinario addressed the applicant and advised that the Board could consider allotting 20 weeks to complete the well testing, and if not done by that time, the Board would have to base their decision on the 2005 testing results, adding that the Planning Board cannot leave the door open on this matter forever. Mr. Regan advised the Board that Braemar had invested over 4 million dollars in the project and will not walk away from it, adding that the new well testing requirements will be complied with. As for the 20 weeks to complete the testing, Mr. Regan advised that his client did not want to commit to the 20-week deadline since the weather had been extremely unpredictable and there was concern that delays may result. Mr. Germinario responded that the Board needed to have some closure on this matter, and suggested a 6-month deadline. Mr. Regan hesitated with the imposition of the deadline, noting that if not met, the 2005 aquifer testing report would have to be presented for the Board's approval. He inquired if the Board would give them a 6-month extension, and the applicant would return to the Board if circumstances beyond their control delayed the completion of the aquifer testing. Mr. Germinario responded that this Board always acts reasonably and would take this into consideration. Mr. Ferreiro suggested that the applicant provide an update every 90 days on the status of the aquifer testing and their Highlands Exemption. Mayor Bieri and Acting Chairman Geoffrey Syme both concurred that this had been attempted in the past with another applicant and was not successful. Mr. Castronova inquired of Mr. Regan how many test wells were on the subject property, and Mr. Regan advised that currently there were 10 wells. Mr. Mulhall advised that more wells were required on the southern end of the site since this was a 17-lot subdivision. He noted that nothing prevented the applicant from drilling another 10 wells on the site, but that it was a matter of economics, because all wells that are not in use must be decommissioned, and the average well depth was 550 to 900 feet deep. Acting Chairman Syme inquired that if only a limited number of wells are being tested, how can it be determined if there are sufficient water supplies for the other lots, and Mr. Mulhall replied that the aquifer test is to make sure the aquifer can withstand the draw. Mr. Germinario commented that even if the aquifer tests are approved, certification is required from the Health Dept. Mr. Mulhall clarified further that the aquifer testing analyzes the data from one well, replicating 13 wells pumping simultaneously from one well. He noted that there may be changes from the data in the 2005 if better fractures in the bedrock are located, but it is hard to predict. He noted that the aquifer does not change. Mr. Ott inquired if there was interaction between the wells and Mr. Mulhall replied that there is, based on the 2005 report, and he provided an explanation of the significant influence in the hydraulic interconnection of the wells. Councilman Weisbecker commented that one of his Health Inspectors advised him that the Health Dept. requires additional DEP information from the applicant. Mr. Regan advised that the applicant will do everything that is required and that they did not have the opportunity to respond to the requests from the Health Dept. to date. Mr. Germinario advised the applicant that the Highlands issue needed to be resolved and that it is relevant to the completeness determination, as well as the Health Dept. approval on the septic systems and wells, although these can be waived as completeness items and be a condition of approval. Mr. Germinario then advised the applicant that the Board could not approve the final subdivision subject to the aquifer testing and an active Highlands Exemption.

Mr. Germinario subsequently advised the Board that the important question was the completeness determination, and as the aquifer testing cannot be confirmed at this time, the Board cannot leave this matter open for an undetermined period of time. He stated that the Board needed to make a determination that the applicant has done his due diligence to comply with the requirements of the aquifer testing. With regard to the final plat, Mr. Germinario noted that it could not be filed without the aquifer testing. Mayor Bieri observed that in 2006 and 2007 the applicant advised the Board that they were about a year from completing the requirements for final approval, they built a house that a C.O. was just recently applied for, and it has been a lapse of 4½ years since the applicant has attempted to comply with the aquifer testing for final approval. She stated that due

diligence has not been shown by the applicant. Robert Nolan commented on his concern that the applicant had no active Highlands Exemption, and that he felt the well testing, and the application itself, should not even be discussed at this time, and only when, and if, the Highlands Exemption is reinstated should the applicant be before the Board. Mr. Regan advised that the Township adopted a new ordinance in the interim and the applicant has agreed to comply with the new regulations. Mr. Loveys commented that he felt the Mayor's comment misrepresented what had transpired in the years since this matter was last before the Planning Board. He noted that until the year prior, little communication occurred between Braemar and the Board, but during that time hydrogeologists had been hired and work had been progressing. He took exception to the implication that Braemar had not been diligent and that they had been negligent with regard to this subdivision. He stressed that he was before the Board at this meeting because if the application is closed and Braemar has to re-file for final subdivision approval, it would be the final blow and this project could not be completed. Mr. Regan noted that the applicant is willing to take a risk and complete the well testing while the Highlands appeal is in process.

This matter was then opened to the public by Acting Chairman Syme and the following addressed the Planning Board:

Richard Randazzo, 278 Wooley Road, was sworn in by Thomas Germinario to testify as an adjacent resident. Mr. Randazzo proceeded to distribute his personal comments in response to a letter from the applicant's attorney, DeCotiis, Fitzpatrick and Cole, LLP, dated August 24, 2011, and read his comments to the Board, consisting of his assertion that the applicant took the data from his well indicating that there were insufficient water supplies available. He also stated that he had been in contact with the NJDEP and they advised him that the applicant would not receive the Highlands Exemption and that it would take 6 months to hear their appeal. He also commented that an official with the DEP advised him that there would not be adequate water supplies available for residents in the next several years.

Doris Aaronson, 19 Bearfort Road, was sworn in to testify and provide comments on this matter. Ms. Aaronson referred to the 2005 report from Maser that had been reviewed at the time by the Township's consultant, hydrogeologist Daniel Nachman of TCR. She reviewed the well data and well recovery from the 2005 report for the Board and noted that the Braemar wells were very deep and the results indicated that there were two good wells of the 17 drilled. Ms. Aaronson compared the Braemar data to the proposed Eagle Ridge project on Cahill Cross Road, and noted that the DEP denied the well permit for Eagle Ridge, and that Braemar wells were twice as deep and had half the yield. She stated that Mr. Nachman reported that the Braemar wells were a failure.

Linda Connolly, 278 Wooley Road, advised the Board that she had located a letter from August 8, 2006 from Braemar, and it included a note from Ken Hawkswell, former Health Officer, stating "exceeds GPG", and a reference to some kind of permit. She made several inquiries with regard to the yields and the requirements of the DEP for the Braemar site, and she stated her concern about the economics of the effect on the off-site well owners and the devaluation of their homes if their wells are affected.

With no one present wishing to address the Board further on this matter, the public portion was **closed** on a **motion** by Steven Castronova and a **second** by Christopher Garcia.

Councilman Weisbecker commented that the Planning Board is more concerned with the health of the municipality than the fiscal welfare of individuals, and Mr. Germinario responded that health and safety were paramount, but fiscal hardship can come into play. In the context of a major subdivision, the applicant can install or bond, and to that extent they can move forward at their own risk. He noted that, as recent legislature has indicated, we are living in difficult times and we have to take into account things to the extent that they are relevant, but he agreed that the Board does not have to sacrifice health and safety for the fiscal situation of a particular applicant. Councilman Weisbecker inquired about the C.O. on the completed dwelling, and inquired if a septic approval had been issued, and Mr. Ferreiro advised that construction permits cannot be issued without Health Dept. approval. Mr. Loveys advised that all perks and septic systems/plans had been approved.

Mr. Germinario advised the Board that they must focus on the application and whether the Board finds it complete as it exists, and provided a synopsis for the Board at the request of Acting Chairman Syme:

The current aquifer testing and water supply ordinance applies as a completeness item, and since this is a health and safety ordinance, it is applicable. The Maser test completed in 2005 does not satisfy the current ordinance. The Board cannot make a decision on an application that does not have sufficient results. The applicant cannot proceed without the Highlands Exemption, and cannot construct or move forward. Mr. Germinario recommended that the Board find this application **incomplete** due to the lack of a Highlands Exemption and conclusive results from the aquifer testing. He left the decision to the Board whether they would allow the applicant to complete the testing and rectify the situation. He noted that he had personally spoken to the DEP and they indicated that it would take some months before the hearing on the Highlands reinstatement would be heard. He advised that the applicant had made a proposal in their letter of August 24, 2011 to bond for the aquifer testing, but Mr. Germinario did not see what purpose this would serve. Giving the long history of this application and the hiatus of action on the part of the applicant, a time limit would be recommended to complete the aquifer testing. Board Member Christopher Garcia inquired of Mr. Mulhall if there was a valid reason why the applicant could not

complete the well testing and Mr. Mulhall replied that he thought it would be completed, but then one of the significant rain events occurred, which delayed the testing. He felt, in all good faith, that Maser was looking to proceed with the testing. He assumed that it would be completed the following week, and with the expensive equipment that was installed in the wells, he felt that everyone expected that it would resume in the weeks that followed. He did concur with Mr. Garcia that there was a dry period between the major rain events that the testing could have resumed.

Acting Chairman Syme made a **motion** to find the application incomplete and Robert Nolan **seconded** the motion. Mr. Germinario inquired whether the Board wished to include a timeframe for responding to the aquifer testing and reinstatement of the Highlands, for example six months, absent any circumstances beyond the applicant's control, leaving the door open for them to comply. Mayor Bieri clarified the options, stating that the Board could find the application incomplete and establish a deadline for compliance, or find the application incomplete and advise the applicant that he would have to re-apply for his final subdivision approval. Mr. Germinario advised that the consequence of having them re-apply is that they would lose their Highlands Exemption, as our ordinance requires that a Highlands must be applied for when the preliminary approval is in effect, adding that the applicant has testified that this would be the final blow to the project. Acting Chairman Syme tried to clarify the matter for the Board, advising that an opinion had been provided by the Board Attorney, that Mr. Mulhall indicated that the testing had stopped, and it seems that the applicant ceased responding to the requirements, all this coupled with the lack of a Highlands Exemption. Mr. Germinario advised the Board that they needed to consider the consequences to the Board and the Township if they do not provide the applicant more time to comply, given the circumstances testified to at this hearing. Acting Chairman Geoff Syme and Robert Nolan **withdrew** their initial motion finding this application incomplete.

Councilman Weisbecker made a **motion** to find the application incomplete, but allow the applicant a certain period of time to comply with the well testing requirements and the Highlands Exemption. He noted his concern about possible litigation and wondered if the Township would be in a precarious position if it did not allow the applicant time to comply, and Mr. Germinario advised that it was a matter of attorney client communication and he was not at liberty to disclose it to the public at this time. Councilman Weisbecker revised his motion to include a 6-month period for the aquifer testing to be completed, with no consideration from the Board for an extension of this time limit without a compelling reason. No second was received for this motion.

Acting Chairman Syme made a **motion** to find the application incomplete with no extension for the applicant to complete the requirements of the ordinances. Chris Garcia **seconded** this motion, adding his feeling that the applicant has given no valid reason to pursue completion of the application. Mr. Germinario clarified the motion before the Board, which finds that the application was incomplete and that the applicant has not been diligent in pursuing the application completeness requirements with regard to the aquifer testing and the Highlands Exemption, and also finding that this application would have to be re-filed with the Planning Board.

Motion by Acting Chairman Geoffrey Syme with a **second** by Christopher Garcia finding that the application is incomplete and that the applicant has not been diligent in pursuing the application completeness requirements with regard to the aquifer testing and the Highlands, and also finding that the applicant would have to re-file the application with the Planning Board.

Roll Call:

Yes: Mayor Bettina Bieri, Christopher Garcia, Robert Nolan, Douglas Ott, Acting Chairman Geoffrey Syme.

No: Councilman Philip Weisbecker, Steven Castronova.

Following the conclusion of this matter, Mr. Regan requested an audio recording of the meeting for their records.

MEMORIALIZATIONS – None.

NEW BUSINESS – None.

ORDINANCES FOR INTRODUCTION

ORDINANCES REFERRED FROM COUNCIL

Ordinance No. 2011-016 and Ordinance No. 2011-017 – Lake Community Requirements

Mr. Germinario advised the Board that there was an existing ordinance regarding lake communities to be notified in the event of construction application, Ordinance #2008-019. He noted that, to some degree, the new ordinances relax the 2008 requirements in that the applicant would only need to provide notice to the lake community organizations. Mr. Ott inquired about the origin of the ordinances, and noted that the Environmental Commission discussed the ordinances and the fact that many lakes do not have lake associations. Councilman Weisbecker stated that the amended ordinances came from the Lakes Committee and advised that the lake associations that are registered with the Township are provided to the Building Dept. so that any construction in one of the registered lake communities will require notification to an association. He noted the numerous construction projects occurring around or near lakes and some that have cost the lake associations money for projects that encroached upon common lake property. He advised that

several attorneys, the Construction Official and Land Use Administrator met to review the ambiguous language of the 2008 ordinance, and the two recent ordinances that were introduced by the Council are the result of amended language. He stressed that no power is given to the lake associations, and that a certified notice to the lake association is all that is required for an applicant. Mr. Germinario advised that since this is not a land development ordinance, that the Board had only advisory input. The following members of the public requested to speak on this matter:

Wayne Gottlieb, Upper Greenwood Road, inquired what the real intent of the ordinance is, and Mr. Germinario noted that the ordinances are characterized as putting an additional burden on lake property owners, but in actuality, the new ordinances seem to mitigate and lessen restrictions, and he added that he is perplexed because the requirement removes the burden from the homeowner. A Board member noted that the concern was that notification would require a response from the lake association, and many associations have volunteer staff. The Board concurred that the provision of notification and proof of notice be altered so that receipt of notification by the lake association would not be required. Mr. Gottlieb inquired why notification is required at all, and Councilman Weisbecker commented about several building projects that were conducted without proper approvals. Mr. Germinario noted that the Board may comment to the Council on this matter based on land use experience, and if there are constitutional issues, the Township Attorney can review them.

Doris Aaronson, Bearfort Road, read a memo from Pinecliff Lake Association stating reasons that they opposed this local legislation, adding that there were never any problems at Pinecliff Lake and there is no reason to serve notice to the association regarding a proposed building project on a lake property.

Maria Elena Grant, 1 Yearling Trail, inquired who from Township Attorney's office drafted the ordinances.

With no one else present from the public to address this matter the public portion was **closed** on a **motion** by Steven Castronova with a **second** by Councilman Philip Weisbecker.

Mayor Bieri suggested that a memo be sent to the Township Council with the comments from the residents. Mr. McGroarty inquired why permits were issued in an encroachment, and advised that a survey should be submitted and reviewed for any potential issues. Councilman Weisbecker requested that a memo also be sent to the Lakes Committee. Mayor Bieri suggested that the ordinance be defeated and a review be made of internal procedures. Mr. McGroarty inquired why there is a need to adopt new ordinances if there is an ordinance on the books now, and Mr. Weisbecker advised that the current 2008 ordinance was too ambiguous and had too many requirements; the new ordinances simplified the language and requirements. The Board concurred that sign-off from the lakes associations should not be required, and that the comments of the Board should be passed along to the Council and Lakes Committee. Mr. McGroarty suggested that the Council put the ordinances on hold while a meeting with the Zoning Officer, Building Department, and Land Use takes place to determine how many violations have occurred and what was done to address the violations, adding that there may have been only an occasional violation over a period of time. Acting Chairman Syme commented that this was not a Planning Board problem and suggested that the Council delay a vote on the ordinances until the matter is researched further.

BOARD PLANNER'S REPORT - None.

BOARD ATTORNEY'S REPORT – None.

BOARD ENGINEER'S REPORT – None.

MISCELLANEOUS

Approval Of Invoices – Board Professionals

Motion to **approve** the invoices submitted by the Planning Board professionals for services performed during the months of July and August 2011 made by Robert Nolan with a **second** by Chris Garcia. The invoices were approved by unanimous consent.

MINUTES

Motion to **approve** the minutes from the June 23, 2011 Regular Meeting made by Councilman Philip Weisbecker with a **second** by Steven Castronova. Robert Nolan abstained from voting. The minutes were approved by unanimous consent.

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

HIGHLANDS WATER PROTECTION AND PLANNING ACT

1. Highlands Act – Exemption #11 and WQMP–Not Addressed, dated September 1, 2011, received for PSE&G Co. – BPU Vegetation Maintenance Compliance.
2. Highlands Act – Exemption #2 and WQMP–Consistent, dated September 2, 2011, received for Cefes Single Family Dwelling, Block 1806; Lot 4, Magnolia Road, for the construction of a three bedroom dwelling on a .206 acre lot.

3. Highlands Act – Exemption #2 and WQMP–Consistent, dated August 18, 2011, received for Paul Kas, Lukoil Site Plan, Block 6701; Lots 8 & 9, 1910 Union Valley Road, for modifications to an existing gas station, including expansion of the parking area, conversion of a service bay into a convenience store, and construction of a canopy over the existing pumps.
4. Notice of an application for a Highlands Applicability Determination for Joan DeFreest, Block 4016; Lot 1, 195 Awosting Road, regarding abandonment of an ISSDS, and connection to existing sanitary sewer system.

NJ DEPARTMENT OF ENVIRONMENTAL PROTECTION

1. Notice of Violation received from the NJDEP, dated July 25, 2011, for Tim Birkoff, 470 Ridge Road, Block 5501; Lots 2.03 & 2.04, for unauthorized regulated activities within a freshwater wetlands transition area including destruction of vegetation and placement of soil and asphalt millings within this area and within the 150 ft riparian zone associated with a tributary to Belcher Creek.
2. Response Action Outcome, received August 29, 2011 from TERMS Environmental Services for MCB Screen Printing & Embroidery and Village Square Inn, Village Holdings, LLC, at Block 15505; Lots 2.01, 2.02, 2887 & 2991 State Hwy 23, regarding a remediation at the site that included preliminary assessment, site investigation, remedial investigation, and remedial action in accordance with NJAC 7:26C-6.2(c).
3. Notice from AECOM, dated August 26, 2011, advising of a submission for Tennessee Gas Pipeline of a Clean Water Assurance Certification Form to the NJDEP to conduct hydrostatic testwater discharge activities for a segment of the natural gas pipeline associated with Loop 325 of the 300 Line Project, with temporary discharge activities to occur on or after September 6, 2011 in West Milford Township.
4. Public Notification received September 6, 2011 from GES Services for Petro Two, Block 5701; Lot 3, 4 Marshall Hill Road, regarding an investigation for environmental conditions at the former Exxon Service Station.
5. Notice from PK Environmental, dated September 13, 2011 advising of an application to be made for Elaine Kramer, Block 4301; Lot 11, 715 East Shore Road, for a General Permit #11, #25, and a Flood Hazard Area Individual Permit for residential improvements and reconstruction activities on subject property.

CORRESPONDENCE

1. Notice from ANJEC received September 9, 2011 regarding the 38th Annual Environmental Congress on October 15, 2011 from 8:15 to 3:30 at the Brookdale Community College in Lincroft, NJ, \$60. for ANJEC members, \$70. for non-members.
2. Notice received on September 6, 2011, from John Wyckoff, P.E. of New Jersey Natural Gas, that revised USGS maps outlining the approximate location of pipelines are available. Maps of the Newfoundland and Waywayanda Quadrangles are on file in the Township Clerk's office. Additional information may be obtained by contacting Mr. Wyckoff at New Jersey Natural Gas.
3. HEPSCD Recertification notice received on September 6, 2011 for: 1) Oberer Single Family Residence & Septic Installation, Block 14201; Lot 14, 350 Germantown Road, to expire on January 29, 2015; and 2) Carpignano Single Family Dwelling, Block 14601; Lot 10, 15 Union Valley Road, to expire on February 10, 2015; 3) West Milford Bikeway Section 3, Westbrook Road, to expire on February 22, 2015.
4. Notice received from the NJ Shade Tree Federation regarding the 86th Annual Conference on October 21 & 22, 2011 in Cherry Hill, NJ.
5. Memo dated August 26, 2011 from the Planning Board to the Township Administrator, Township Council, Health Officer, and Police Chief requesting a review of the Township's noise ordinance, Chapter 226, Sections 1 to 7 and 226 a, b, based on comments from Township residents at a recent Planning Board hearing.
6. Mayors Fax Advisory from the NJ League of Municipalities, dated September 14, 2011, opposing S-2887, which could potentially establish a new category of farmland-based wind energy generation projects on farmland preservation land, specifically exempting wind turbines from "review, approval or application from any state, county or municipal regulatory body" except for minor site plan review.
7. Notice from the NJ League of Municipalities, dated September 14, 2011, advising of a professional development program for municipal officials "Taking the Mystery Out of Applying For Grants" on October 5, 2011 in Monroe Township.

ADJOURNMENT

With no further business to come before the Board, Acting Chairman Geoffrey Syme **adjourned** the September 22, 2011 Regular Meeting of the West Milford Planning Board at **12:40 a.m.** on September 23, 2011 on a **motion** by Steven Castronova with a **second** by Councilman Philip Weisbecker.

Approved: August 2, 2012

Respectfully submitted by,

Tonya E. Cubby, Secretary