

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

October 22, 2009

Regular Meeting

The Regular Meeting of the Planning Board was opened at 7:31 pm by Chairman Andrew Gargano with a reading of the Legal Notice, followed by the Pledge of Allegiance.

OATH OF OFFICE – Alternate #2 Thomas Harraka

Prior to the Roll Call, Thomas Harraka, newly appointed Alternate #2 was sworn in by Thomas Germinario, Planning Board Attorney.

ROLL CALL

Present: Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Richard McFadden, Douglas Ott, Clinton Smith, Geoffrey Syme, Alternates Michael Siesta and Thomas Harraka, Chairman Andrew Gargano, Board Attorney Thomas Germinario, Esq., Board Engineer Paul Ferriero, P.E. Board Planner Charles McGroarty, P.P.

Absent: Councilman Philip Weisbecker.

Chairman Andrew Gargano requested that Michael Siesta sit on the Board for absent member Councilman Philip Weisbecker.

PUBLIC PORTION

The Public Portion was opened by Chairman Gargano. The following addressed the Planning Board about several matters of concern:

Doris Aaronson, 19 Bearfort Road, addressed the Planning Board about the Village On Ridge Final Subdivision and the prior denial by the Planning Board for an extension of time. She advised that she was in possession of a document entitled Final Notice of “Technical Deficiencies” that was issued last February listing the deficiencies and providing the applicant 15 days to rectify. Ms. Aaronson also noted that there were water quality and quantity issues cited by the NJ DEP, and contended that the applicant did not have an adequate sewer permit, all grounds to justify the loss of their Highlands’s Exemption. Ms. Aaronson also requested that the Planning Board consider information she provided that the development is located in the same bedrock formation that has granite and gneiss formations. She requested that the Board consider contracting with M2 Associates to conduct well tests on the site. Chairman Gargano advised Ms. Aaronson that he was recused from this matter and could not comment. Thomas Germinario, Board Attorney, advised that this matter was in litigation and he will be discussing it with the Planning Board during Closed Session at the end of this meeting.

Gerald Gardner, P.E., Gardner & Associates, Ringwood, addressed the Board about Robert Coyman and his Highlands issues with regard to a prior Planning Board application for Greenwood Lake Turnpike (proposed Bowling Alley). Mr. Gardner inquired about other previously developed properties located in the Township that are seeking redevelopment, and he questioned how the Highlands would affect these properties. He inquired about the wastewater management plan amendments and sewer issues. Paul Ferriero, Board Engineer, advised that the matter of redevelopment of properties would be addressed by the Highlands Master Plan. As for the subject property on Greenwood Lake Turnpike, Mr. Ferriero noted that he was aware of the site, and also aware of the previous application, but could not say at this time how the matter will be dealt with. Mayor Bieri advised that the wastewater management plan was discussed at a recent meeting and could not determine how close the Township is to adopting a plan.

Mark Kleindeinst, Allison Avenue, made several inquiries to the Planning Board with regard to the Richard Slifer property on Allison Avenue, including monitoring the number of trucks that will be parked on the property and whether the owner will be able to acquire a C.O. for the premises. He also asked the Board to consider whether Mr. Slifer would be giving up ownership and then leasing the site from the new owner for his business.

With no one else present wishing to address the Board, Chairman Gargano **closed** the public portion on a **motion** by Geoffrey Syme and a **second** by Michael Siesta.

SITE PLAN APPLICATION REVIEW WAIVERS – There are no site plan application review waivers.

APPLICATIONS

TIME EXTENSIONS – There were no time extension requests.

PENDING APPLICATIONS

RICHARD SLIFER

Preliminary and Final Site Plan #0620-0260AB

Block 15701; Lot 34

5 Allison Avenue; HC Zone

Seeking: To discuss potential amendments to conditions of Final Site Plan Approval as set forth in Resolution #2007-17.

Mr. Richard Slifer, Schofield Road, appeared before the Board to ascertain whether he had satisfactorily met all the conditions of his resolution prior to the December 26, 2009 deadline, believing that he had met all the conditions. Mr. Germinario, Board Attorney, clarified with Mr. Slifer the reasons he requested to appear before the Board. Mr. Ferriero stated that he was not prepared to report at this meeting whether Mr. Slifer had complied with the resolution conditions, adding that it was his understanding that Mr. Slifer was appearing to request an amendment to his conditions of site plan approval. Mr. Slifer stated that a potential purchaser was unable to attend this meeting due to an injury, but he indicated that wanted to keep the property at the same grade that it currently is at instead of the proposed grade in the approved site plan. Mr. Germinario advised that if this is what he wanted to do, Mr. Slifer's engineer must revise the plans and file an amended site plan. Mr. Ferriero, Board Engineer, concurred with Mr. Germinario. Mr. Germinario did note that the new purchaser could also amend the site plan. Mr. Slifer then requested the Board permit the issuance of a C.O. for the residential site on the property in order to generate income so that he can complete the site work per the plan. Mr. Germinario noted that photos were taken that same day by the Zoning Officer and they did not indicate that the site had been cleaned up as previously requested by the Board. Mr. Slifer commented about his financial difficulty in completing the site work per the plan. Mr. Ferreiro reiterated that he needed to review Mr. Slifer's file and could not comment on an alternate proposal at this time.

The meeting was opened to the public by Chairman Gargano. The following addressed the Board on the Slifer matter:

Thomas Gensheimer, Allison Avenue, noted that Mr. Slifer was supposed to clean up debris at his property and remove dead shrubs. Rich McFadden, Township Engineer and Board member, clarified the amount of soil (50 to 500 square yards) that may be brought to a property without filing a major soil movement permit. Mr. Gensheimer inquired whether Mr. Slifer's C.O. would be for the residential site. Mr. Ferreiro replied that he would confer with Mr. Germinario on this. Mr. Gensheimer also recommended that the Board not allow a C.O. to be issued until the site improvements are completed.

Maryellen Vermuellen, Allison Avenue, advised that she has been before the Township Council and had been in contact with the prior Planner regarding this matter, but expressed confusion over the possibility that the property could be sold prior to the conditions being met. Mr. Ferriero clarified that the owner, Mr. Slifer, could sell the property in its current condition without perfecting approval of the site plan, but there were other improvements that must be installed, noting that it is a complex process. He explained further that if a buyer purchased the property, he would have to deal with the conditions of the site plan approval, as these run with the land. The responsibility for the conditions that must be met by December 26, 2009 would transfer to the new owner. Mrs. Vermuellen also inquired about the "mound" of soil that was referred to by Mr. Slifer, and Mr. Germinario replied that he was referring to the overall topography of the site in relation to the approved site plan. Mrs. Vermeullen noted that landscaping on the site and installation of a proper fence were some of the original requirements of the Planning Board. Mr. Ferriero assured Mrs. Vermeullen that this Board and the professionals are attempting to make sure the work is completed. When asked when the work would be done, Mr. Germinario replied that site work could not commence until the conditions of the resolution of site plan approval have been met. Mr. Ferreiro also commented that the site plan approval that exists would allow the owner to utilize the site in a manner that is already permitted in that zone. He added that the plans and file have to be reviewed for compliance, but noted that there was no new application before the Board with respect to this matter. Mrs. Vermeullen advised that she came to the meeting because had received notification via certified mail regarding possible amendments to conditions of Mr. Slifer's site plan approval.

Brian Leet, 7 Allison Avenue, referred to a copy of a letter to the Planning Board from Mr. Slifer, dated September 26, 2009, requesting to stake his property himself to meet a condition of the site plan approval. Mr. Leet had a concern about the stakes that were in place on his property being moved or removed. He stated that the entire matter has been ongoing for five years and he wanted the issues resolved. Mr. Leet also inquired about a deck that was installed by Mr. Slifer and whether he had received permit approvals for the installation.

With no one else present wishing to address the Planning Board on this matter, the public portion was **closed** on a **motion** by Geoffrey Syme with a **second** by Douglas Ott.

Mayor Bieri commented that the Board understood the frustration of the residents, and that is the reason why deadlines were set for Mr. Slifer to meet the conditions of approval, adding that the Board's actions have been documented. She also noted that it appeared to be in everyone's best interest if the site had a new owner, and the Board was trying to make it more feasible for this to happen.

Chairman Gargano announced the next applicant, Vincent Lanza, who wished to address the Planning Board about possible amendments to his conditions of prior subdivision and site plan approval.

VINCENT LANZA
Minor Subdivision #0510-1976
Preliminary and Final Site Plan #0520-0219AB

Bulk Variance #0530-0718

Block 9501; Lot 12

1383 Macopin Road; R-3 Zone

Seeking: To discuss potential amendments to conditions of approval for Minor Subdivision, and Preliminary and Final Site Plan as set forth in Resolution #2008-7.

Vincent Lanza, 40 Forest Lake Drive, was present to address the Planning Board. Mr. Germinario, Board Attorney, clarified the request by Vincent Lanza to address the Board regarding amendment of several of the conditions of his subdivision and site plan approval. Mr. Germinario advised that proper notice of this request for amendment of prior approval was made by the applicant and a copy was received by the Board Secretary and was on file with the Planning Office. The conditions required to be satisfied prior to filing the minor subdivision deeds were reviewed by Mr. Germinario and Mr. Lanza. Mr. Lanza stated that he had tenants who occupied one of the buildings on the site and did not want them accessing the construction site through a new driveway that he was required by resolution to install prior to commencing with construction of the septic and parking lot. He further stated that he had conversations with the Passaic County Planning Department and they did not have a concern with his maintaining the current access drive for his tenants until the construction was completed. He also advised that he could not obtain proper financing unless the deeds were filed, but he could not file the deeds based on the current language in the resolution. After review, Mr. Germinario observed that there were issues with item #4 E in the resolution. Mr. Lanza, Mr. Ferreiro, Board Engineer, and Mr. Germinario discussed the conditions of the resolution. Mr. Lanza indicated that he wanted to proceed with construction permits, and requested the deeds be reviewed and signed so he could submit them to Passaic County. Mr. Germinario advised the Board that the resolution could be amended to reformat line E, and also amend the condition on the driveway, allowing construction of the access drive for Lot 12.02 prior to issuance of a Certificate of Occupancy for Lot 12.02. With regard to the other matters required by Passaic County for their approval, Mr. Lanza stated that he is addressing their concerns directly with them. Mr. Ferreiro noted that when these items are addressed and approval is given, Mr. Lanza will receive sign off from the Township and can proceed, adding that we need Passaic County approval before he can go to construction, as this is a condition of his site plan. Mr. Ferreiro explained that the approvals from both the County and the Township are not technically related, but one approval is reliant upon the other. He further advised that we need correspondence from Passaic County giving their approval to go to construction. Mr. Lanza was advised to get that correspondence to Mr. Ferreiro upon receipt.

The matter was opened for public comment by Chairman Gargano. With no one present wishing to address this matter, the public portion was **closed** on a **motion** by Michael Siesta and a **second** by Steven Castronova.

A **motion** was made by Michael Siesta to **amend** Resolution No. 2008-7 as specified above, with a **second** by Steven Castronova. Mr. Germinario advised that since this was an amended resolution, all members of the Board were eligible to vote. With no further discussion, a roll call vote was taken.

Roll Call: **Yes** - Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Richard McFadden, Douglas Ott, Michael Siesta, Clinton Smith, Geoffrey Syme.
 No - Chairman Andrew Gargano.

NEW BUSINESS – An announcement was made concerning the upcoming Township’s 175th Anniversary Gala sponsored by the West Milford Heritage Committee and Museum.

MEMORIALIZATIONS – None.

ORDINANCES FOR INTRODUCTION – None.

ORDINANCES REFERRED FROM COUNCIL- None.

PLANNING BOARD PLANNER’S REPORT- None.

PLANNING BOARD ATTORNEY’S REPORT- None.

PLANNING BOARD ENGINEER’S REPORT- None.

MISCELLANEOUS

Approval Of Invoices – Board Professionals

Motion by Steven Castronova with a **second** by Douglas Ott to **approve** the invoices submitted and reflected on the August 2009 Invoice Report.

Roll Call: **Yes** - Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Richard McFadden, Douglas Ott, Michael Siesta, Clinton Smith, Geoffrey Syme, and Chairman Andrew Gargano.
 No - None.

Subcommittee Reports

Master Plan Subcommittee - None

Ordinance Subcommittee – Chairman Gargano noted that the Ordinance Committee met prior to this meeting and they worked with Chuck McGroarty on the new sign ordinance. He hoped to have something for the Board by the next meeting.

Building Design Subcommittee – None.

Site Plan Committee – None.

MINUTES

The minutes of the August 27, 2009 Planning Board meeting were approved on a **motion** by Steven Castronova and a **second** by Richard McFadden.

Roll Call: **Yes** - Mayor Bettina Bieri, Steven Castronova, Richard McFadden, Douglas Ott, Michael Siesta, Clinton Smith, Geoffrey Syme, and Chairman Andrew Gargano.
 No - None.

Addendum #2

RESOLUTION NO. 2009-17

AUTHORIZING AMENDMENT OF THE CONTRACT FOR PROFESSIONAL SERVICES TO PAUL W. FERRIERO, P.E., P.P., C.M.E.

Increasing the not-to-exceed limit for Planning Board Engineering Services from \$6,000. to \$7,200.

Motion by Steven Castronova with a **second** by Richard McFadden to approve Resolution No. 2009-17 increasing the contract for professional services for Paul W. Ferriero, P.E. to \$7,200.00.

Roll Call: **Yes** - Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Richard McFadden, Douglas Ott, Michael Siesta, Clinton Smith, Geoffrey Syme, and Chairman Andrew Gargano.
 No - None.

The following were reviewed by the Planning Board and filed:

COMMUNICATIONS

1. No Further Action and Covenant Not To Sue letter received from the NJDEP, dated September 30, 2009, regarding removal of a 550-gallon underground storage tank for Block 7003; Lot 4.02, Bender Residence.
2. Invitation from Passaic County Board of Chosen Freeholders regarding an information session about two new initiatives offered by PSE&G entitled “Direct Install for Government Facilities” and “Solar 4 All” on Friday, October 23, 2009 from 9:00 to 10:30 am.
3. Invitation to attend the “Passaic County Recovery Zone Economic Development Bond Briefing: How Your Community Can Benefit Financially” to be held on October 26, 2009 from 2:00 – 4:00 at the Passaic County Department of Economic Development.
4. Letter from Science applications International Corporation regarding Notification and Public Outreach Requirements for the former Texaco Service Station on 1457 Union Valley Road, Block 7601; Lot 2, acknowledging their compliance with NJDEP public notice regulations outlined in N.J.A.C. 7:26E-1.4.
5. Certification of soil erosion and sediment control plan dated September 22, 2009 received from Hudson Essex Passaic Soil Conservation District for Apple Valley Estates Remediation, block 9901; Lot 12, Union Valley Road, West Milford.
6. Certification of soil erosion and sediment control plan dated September 22, 2009 received from Hudson Essex Passaic Soil Conservation District for Dena Car, LLC site Improvements, Block 14104; Lot 1, 2038 Route 23 North, West Milford.
7. Notice of Denial of Application from Hudson Essex Passaic Soil Conservation District for Valley Ridge Development regarding the lack of revisions in the soil erosion and sediment control plan submitted in June 2007.
8. Letter from the Passaic County Planning Department, dated October 6, 2009, regarding Carol and Eric Louer, Block 3503; Lot 46, 1925 Union Valley Road, advising that no permanent CO should be issued until the as-builts show the roof leaders connected to the new inlet on Union Valley Road.
9. Notice dated October 9, 2009 from the Tennessee Gas Pipeline Company of intent to apply to the NJDEP for a Letter of Interpretation to establish where regulated wetlands are found on their property/easement.
10. Letter from Paul Ferriero dated October 8, 2009 regarding Ernie Oakes Amended Final Site Plan, Block 6002; Lot 44.03, Burnt Meadow Road, noting that the site work was in compliance with the approved plan and the CO may be issued.
11. Notice of an application by the following for a GP #25 regarding installation of a subsurface sewage disposal system: Kerry Greene for 49 Maple Rd., Block 10204; Lot 4; Dianna Blanke for 20 Madelyn Ave, Block 6603; Lot 17.
12. Letter from Anthony Patire of Marshall Hill, LLC, dated October 10, 2009 requesting a Township resolution of support in his efforts to create a wetlands mitigation site and with the Highlands Council and NJDEP regarding the West Milford Lake Dam site.

13. Dam Permit #1302 for Marshall Hill, LLC for removal of the West Milford Lake dam structure on Morsetown Brook.
14. Notice of Violation dated September 29, 2009 from the NJDEP received for Pazak Service Station, aka Route 23 Corporation, 3021 Rt. 23, for failure to address deficiencies noted in submitted Remedial Action Report.
15. Notice from the Tennessee Gas Pipeline Co. regarding anticipated mowing on the existing pipeline right of way to begin on or about November 1, 2009.
16. Ordinance 2009-021 from the Township of West Milford Amending and Supplementing Chapter 90, Buildings, Numbering Of, requiring adoption of a house numbering map and display of numbers on all buildings and mail boxes.
17. Notice from Motiva Enterprises dated August 31, 2009 regarding notification and public outreach for Rt. 23 and Union Valley road, Block 14604; Lot 1, for remediation of the site.
18. Letter from NJDEP dated September 17, 2009 to Anthony Patire, Marshall Hill, LLC, advising that the DEP is proceeding with the necessary steps to construct a breach of the West Milford Lake Dam pursuant to the Safe Dam Act, N.J.S.A. 58:4-5d(2).
19. Letter dated September 23, 2009 to Anthony Patire, Marshall Hill, LLC requesting an escrow deposit of \$3,000. for services rendered on his behalf by various Township professionals and consultants with regard to the West Milford Lake Dam.
20. Community Notification Documents Per NJAC 7:26 E Section 1.4, received from Synergy Environmental for Lakeside Amoco, 2 Lakeside Road, Block 3509; Lot 16, with regard to on-going environmental investigation at the site.
21. Notice from Lukoil/GPMI Service Station, 1367 Union Valley Rd, Block 7508; Lot 16, with regard to remediation of environmental contamination at the site.
22. Notice of Violation received on September 11, 2009 regarding Freshwater Wetlands and Flood Hazard Area violations for Ken Perry, 93 Morsetown Road, Block 5001; Lot 4.
23. Notice of Violation dated 09/15/09 received for Kean Gibbons, 20 Krattiger Court, Block 10301; Lot 9, regarding Freshwater Wetlands and Flood Hazard Area violations.
24. Authorization for GP #25 and Waiver of Transition Area for Access received for the following: James Dunne, Block 10816; Lot 3; John Mileski, Block 16201; Lot 6; William Thayer, Block 2609; Lot 1; Ray and Karen Prashil, Block 905; Lot 6; Michael DelVecchio, Block 10301; Lot 16.
25. Public Notification regarding environmental contamination received on September 2, 2009 from Service Concrete, 173 Oak Ridge Rd., Block 15901; Lot 5 & 13.

HIGHLANDS WATER PROTECTION AND PLANNING ACT – None.

1. Agency Determination – Highlands Act Exempt #4 – Water Quality Management Plan – Consistent, dated September 30, 2009, received for Mr. Wonton, LLC, Block 6303; Lot 18, 1546 Union Valley Road, for reconstruction of parking area, including new curbing, paving and drainage.
2. Notice of Intent to Cancel, dated September 30, 2009, received for Cefes Financial, Harold Smith, for construction of a single family dwelling on Magnolia Road, Block 1806; Lots 4 and 5, due to insufficient documentation submitted for Highlands Determination.
3. Supplement to Highlands Applicability Exemption Request for Tennessee Gas Pipeline – 300 Line Project dated September 30, 2009 from Giordano, Halleran & Ciesla, regarding submission of documents for minor adjustments to the proposed 325 loop route, right of way, and temporary work space due to a more detailed design engineering analysis.
4. Letter from the Highlands Council dated September 30, 2009 providing Module 4 – Draft Environmental Resource Inventory on CD.
5. Notice from Michael Hoek, Block 7903; Lot 12, 1468 Union Valley Rd., received September 21, 2009, of an application to be made for a Highlands Exemption.
6. Highlands Determination – Not Major Highlands Development, and Water Quality Management Plan – Consistent, received on September 21, 2009 for Thomas Celano, Minor subdivision, Block 5309; Lot 1, Cahill Cross Road. Also received was approval of a revision to the Northeast Quality Management Plan.

CLOSED SESSION

Prior to the conclusion of the Regular Meeting of the Planning Board, Mr. Germinario advised that the Board would convene in Closed Session for an update on the matter of Jack Levkovitz vs. Township of West Milford Planning Board.

Chairman Gargano recused himself from the Closed Session and left the meeting. Geoffrey Syme took the Chair for the remainder of the meeting. Thomas Harraka was asked to sit on the Board for Andrew Gargano.

The following resolution was read into the record by Acting Chairman Syme:

Addendum #1

RESOLUTION NO. 2009 - 16

CLOSED SESSION

BE IT RESOLVED by the Planning Board of the Township of West Milford on this **22nd** day of **October, 2009** that:

1. Prior to the conclusion of this Regular Meeting, the Township Planning Board shall meet in Closed Session, from which the public shall be excluded, to discuss matters as permitted pursuant to N.J.S.A. 10:4-12, sub-section:

- b. (7) Pending / Potential Litigation:

Jack Levkovitz vs. Township of West Milford Planning Board

2. The time when the matters discussed pursuant to Paragraph 1 hereof can be disclosed to the public is as soon as practicable after final resolution of the aforesaid matters.

Present: Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Richard McFadden, Douglas Ott, Clinton Smith, Michael Siesta, Thomas Harraka, Acting Chairman Geoffrey Syme, Paul Ferriero, P.E., Chuck McGroarty, P.P., and Thomas Germinario, Esq.

Absent: Chairman Andrew Gargano, Councilman Philip Weisbecker

Following the conclusion of the Closed Session, the Planning Board reconvened at 9:28 p.m. with Acting Chairman Geoffrey Syme.

Mr. Germinario advised that, with regard to Jack Levkovitz's request for an extension of time for modification of the 2005 resolution of subdivision approval, the issue of water availability, quantity, and quality be referred to Matt Mulhall of M2 Consulting. Furthermore, Mr. Germinario would be authorized to contact Mr. Mulhall and obtain a proposal and an estimate of the cost of that evaluation, and that the retaining of Mr. Mulhall would be subject to the posting of an escrow. Mr. Mulhall's fees would be paid by that escrow account established by the applicant.

Motion made by Michael Siesta with a **second** by Richard McFadden to **authorize** Mr. Germinario to proceed as stated above.

Roll Call: **Yes** - Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Richard McFadden, Douglas Ott, Michael Siesta, Clinton Smith, Geoffrey Syme, Thomas Harraka.
No - None.

ADJOURNMENT

With no further business to come before the Board, the Planning Board meeting of October 22, 2009 **adjourned** at **9:35 pm** on a **motion** by Steven Castronova and a **second** by Douglas Ott.

Approved: March 4, 2010

Respectfully submitted by,

Tonya E. Cubby, Secretary