

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

October 25, 2012

Regular Meeting

The Regular Meeting of the Planning Board was opened at **7:33 p.m.** by Chairman Geoffrey Syme with a reading of the Legal Notice, followed by the Pledge of Allegiance. Chairman Syme noted that there was a quorum present for this regular meeting.

ROLL CALL

Present: Mayor Bettina Bieri, Linda Connolly, Christopher Garcia, Andrew Gargano (7:35), Robert Nolan, Douglas Ott, Councilman Luciano Signorino, Chairman Geoffrey Syme, Alternates Steven Castronova and Michael Siesta, Board Attorney Thomas Germinario, Board Planner Chuck McGroarty, Board Engineer Paul Ferreiro, P.E.

Absent: None.

Chairman Geoffrey Syme appointed Alternate Steven Castronova to sit on the Board for Andrew Gargano until he arrived.

PUBLIC PORTION

Chairman Syme opened the Public Portion of the meeting. The following addressed the Planning Board:

Richard Randazzo, Wooley Road, advised the Board that he has requested the testing results from the monitoring of his well from applicant Braemar at West Milford, LLC, but has not received the results. He requested that he, and the other residents who had their wells monitored, be provided with the results if the applicant returns before the Board. Thomas Germinario, Attorney, advised that when the application's hearing commences he should make his request at that time.

With no one else present wishing to address the Planning Board on any matter of concern, the Public Portion was **closed** on a **motion** by Robert Nolan with a **second** by Steven Castronova.

APPLICATIONS

BRAEMAR AT WEST MILFORD, LLC

(Greene Valley Estates)

Final Subdivision Application #0610-1910B

Block 10001; Lots 14, 19, 20, 23 Wooley Road; R-3 and R-4 Zones

Seeking: Final Major Subdivision Approval With Conditions for Block 10001; Lots 14, 19, 20, 23 based on the settlement agreement reached between the applicant, Braemar at West Milford, LLC and the Township of West Milford Planning Board.

Prior to the hearing commencing on the Braemar at West Milford, LLC application, Board members Andrew Gargano and Linda Connolly were recused from this application and left the dais. Chairman Geoffrey Syme appointed Michael Siesta to sit on the Board for Andrew Gargano. Frank Regan, Esq., attorney for the applicant, Braemar at West Milford, LLC, addressed the Board, advising that the applicant was present to request approval of the final major subdivision application filed in 2006 based on the settlement agreement dated September 24, 2012, which stipulated that the application be reinstated and be brought before the Board within 60 days. Mr. Regan gave a brief overview of the history of the subdivision application, which received preliminary subdivision approval in 2003, an extension granted in 2006, with the final subdivision application filed in March 2006. He continued to summarize for the Board, noting that in October 2011 the Board denied final subdivision approval based on the application being deemed incomplete since the aquifer testing had not been completed and the Highlands Exemption had expired. Litigation was initiated by the applicant in December 2011, and following negotiations, a settlement was reached which required the Board and the applicant to abide by certain terms. The agreement stipulated that the Board would grant final subdivision approval with the conditions that the applicant complete the aquifer testing and receive reinstatement from the Highlands within 18 months from conditional approval. Mr. Regan advised that the applicant intended to fully comply with the aquifer ordinance and waived the right to challenge the new amendments instituted in 2012, but would not be subject to any subsequent amendments following the settlement agreement. The applicant would comply with the aquifer testing and present evidence to the satisfaction of the Board and the Board's hydrogeologist, in addition to being required to present a reinstated Highlands Exemption. In the event that there are delays in the reinstatement of the Highland's Exemption or completing the aquifer testing, the Board may grant an extension for special circumstances. Mr. Regan maintained that the applicant had invested over 4 million dollars on this project since he purchased it in 2006, with the roads and infrastructure installed, construction of one house on Wooley Road which recently received a CO, and one partially completed house, and was ready to move forward with this subdivision in a single phase under the conditions reached in the settlement.

Mr. Regan referred to Chuck McGroarty's memo of October 24, 2012 with regards to the open space easement that was noted on the subdivision map. He advised that the applicant would consider transferring ownership to the Township if the Township wanted the open space to remain as a public space, but the applicant addressed this matter in his correspondence to the Board in January 2011, at which time they maintained that all work under the DEP permits had been completed and that no trails were proposed for the subdivision. Mr. Regan noted that the terrain included steep slopes and wetlands, and trail construction would result in too much disturbance and would not be feasible. Mr. Germinario advised Mr. Regan that in the declaration of easements, public access is noted, and Mr. Regan countered that this should be corrected

if no trails were being proposed. He then noted that there would be no signage required if public access was restricted in the easement areas, and the easements would be recorded with the filing of the plat and recognized by the homeowner's agreement. Mr. McGroarty advised that the Board would have to consider this matter since the areas were clearly identified on the approved preliminary plan, with the hiking trails, parking area, and conservation easements. With regard to identification of the property lines, wetlands, and conservation easements in the field, Mr. McGroarty noted that flagging, monuments or fencing could be considered.

Paul Ferriero, Board Engineer, referred to his report to the Board, and advised that a detailed discussion was not necessary if the applicant testifies that he agrees to address all the items in the report. Mr. Regan inquired about several items that Mr. Ferriero's report stated were not included on the plans, and also his comments about the need for an updated plat. With regard to inspections of the improvements, Mr. Regan noted that inspections had been completed and as-built surveys were submitted to the Township Engineering Dept. Mr. Germinario noted that the final plat had been reviewed but not approved by the former engineer. Ralph Loveys, representing Braemar at West Milford, LLC, was sworn in and addressed the Board regarding several of the comments made in Mr. Ferriero's report, inquiring why more documentation was needed if all the items had been complied with by submissions made to the former Planner and Engineer for the Board. Mr. Germinario responded that he respected Mr. Lovey's opinion, but six years had transpired since the filing for the final subdivision, and most of the required information was reviewed by the prior professionals. Mr. Regan advised that they have documentation to the contrary and will provide it to the Board. With regard to closure calculations, Mr. Regan advised that the lot numbers were assigned in 2006 and if they are incorrect they will be changed, easements will be provided to the Board Attorney for approval, the homeowner's association will be responsible for basins, and the homeowners will be responsible for the retaining walls, which is all stipulated in the maintenance manual and association documents. Mr. Regan stated that the applicant will address items # 9 and 10, and documentation will be submitted to confirm that the as-builts conform to the approved plan with regard to the roadway and drainage improvements, and items 12 through 16 of Mr. Ferriero's report will also be complied with. Mr. Ferriero noted, that with regard to his comments, he did not intend to "re-invent the wheel," but he stressed that certain requirements must be done to conform to the map-filing act, and the map that he received was not readable and he cannot sign a map that is not legible. Mr. Regan stated that the applicant would comply with all the requirements, meet with the surveyor and submit a plan that the applicant, Board, and professionals are comfortable with. At this time, he continued, the applicant was seeking final major subdivision approval with the conditions that the Highlands must be reinstated and the water supply ordinance is complied with. The applicant intends to come before the Board once the conditions have been met to determine if they are satisfactory to the Board before the plat can be filed and the project re-commences. Mr. Regan advised the Board that the applicant is working on the well testing plan and hopes that the Board will act favorably on this application.

One of the Board members inquired about using rebar to mark the property lines and Mr. Ferriero responded that it was not a requirement, that the lot lines will be on the survey and the owner will have to sign a waiver that they will not have rebar set at the corners. With regard to a Board members inquiry regarding conservation easements and deed restrictions, Mr. Ferriero stated that these would also be noted on the surveys and in the deeds. Mr. Germinario observed that towns often require markers on conservation easements as a matter of practicality, so that there are tangible markers demarcating the conservation areas. Another Board member inquired if the homeowner would get a tax break if a portion of their property has a conservation easement, and Mr. Germinario noted that it does affect the evaluation of the property if an area is restricted. The Board discussed the conservation easements and public access, and Mr. McGroarty stated that in the June 2003 preliminary subdivision plan, revised February 11, 2004, 15-foot wide conservation easements are shown on the northerly side, which were outside the wetlands transition area, and would, at some point connect to the parking area easement by traversing the wetlands transition area. He further indicated that on the southerly side of the proposed subdivision, no trails are identified. Mr. McGroarty could not make the determination that open space was discussed at the preliminary subdivision hearing, and Mayor Bieri observed that since this was 10 years ago, public open space was usually required with cluster housing. Mr. Regan advised that the conservation easements were a requirement of the NJDEP permits and the applicant will be compelled to file the easements, but he and Mr. McGroarty agreed that it was not clear whether it would require open space or public access for hiking trails. Mr. McGroarty indicated that much of the area is wooded and dense and would remain undisturbed with the markings located in the wooded areas. Mr. Ferriero observed that there were two easements shown, conservation easements which were not required by the DEP, and buffer easements at the rear of the lot. The Board and applicant discussed the possible establishment of trails, and Mr. Loveys interjected that the properties are not conducive to hiking trails and it would not be plausible to create them. He testified that he was not aware of the discussions that occurred prior to his ownership, but the area referred to by Mr. McGroarty consisted of very steep slopes and sudden drops that would make hiking very difficult. He further noted that the easement was a linear easement and trails could not be established in the location indicated, and if they attempt to relocate trails by looping, they would cross wetlands and transition areas. He invited the Board members to meet at the site to walk the area indicated on the plans as a public access area for hiking trails. Douglas Ott, Board member and Environmental Commissioner, advised the Board that the reasoning behind the establishment of trails in developments was to give the public a way to get around and through neighborhoods, and he suggested that the Environmental Commission look at this at their next meeting to determine if it is feasible, especially with a 15-foot path. Councilman Lou Signorino commented that it would not be advisable for people to go on private property or travel on dangerous trails. Mr. McGroarty advised the Board that it was their decision, that he was not advocating either way, but cautioned that it would not be good to approve a public access trail and not include signage. Board member Michael Siesta inquired who would be legally liable if the public accessed private property, and Mr.

Germinario responded that it would be the homeowner's association and the homeowner, to which Mr. Siesta replied that the homeowner could then be sued for something they have no control over.

Mr. Germinario advised that the conservation easements should be established and it would be the Board's decision to require improved hiking trails or leave the area undisturbed. Mr. Ott requested that the Environmental Commission review the plan before the Board made a decision regarding this matter. Mr. Germinario advised the Board that they could approve the final subdivision at this meeting and delegate to the Environmental Commission to determine if the hiking trails would be beneficial. Mr. Regan observed that the applicant would have to return to the Board regarding the well testing and the Highlands Exemption, and suggested that the access trails be discussed at that time. Steven Castronova inquired whether the trails connected to any site in particular to make it more feasible, and Mr. Ott replied that they connect to the Greene property, and Mr. Castronova observed that there could be issues if people park in the proposed parking area easement. Mayor Bieri commented that it would be fine if it were possible to have a public purpose, but she did not want to have a non-traversable area become the Township's responsibility, or anything that would expose the Township to a liability. Board member Robert Nolan suggested that the Township require the applicant to make a contribution to the open space fund in lieu of the establishment of public open space, but Mr. Germinario responded that since it was not addressed in the preliminary plan the Board could not compel the applicant to do that. Mr. Regan advised that he could not ask his client since this would create another undue hardship since most of the site is being preserved and is not developable. Mr. Nolan then inquired if the new well testing plan had to be approved by the Board's hydrogeologist, and Mr. Germinario replied in the affirmative. Mr. Regan advised that the plan was being revised and will be submitted. Mayor Bieri inquired about the well data that was taken from the neighbors' monitoring wells, and Mr. Regan replied that his client had advised that the information was not useful and would not be included in their report, although they fully intend to comply with the provisions of the ordinance.

The hearing was opened to testimony from the neighboring property owners by Chairman Geoffrey Syme. The following addressed the Planning Board regarding this application:

Richard Randazzo, Wooley Road, was sworn in and testified that there was potentially room for a trail, although the trail would cross other properties, and he noted that an access road does exist as he has walked through the area many times. Mr. Randazzo observed that there is a ledge to the right, but there is about 10 to 15 feet for a trail. With regard to the applicant's Highland's reinstatement, he assumed that the applicant would have to follow the guidelines with regard to wetlands, and observe a 300 foot buffer instead of a 50 foot buffer that was previously required by the NJDEP. He inquired whether the aquifer testing could be completed without a Highlands Exemption. Mr. Randazzo reiterated his request for the well data from the monitoring of his well in 2011, maintaining that the information was very important to him, was done without his approval, and extended for a period of over 3 months. He noted that the information was necessary when he sells his house, and was basing his request on the applicant's hydrogeologist's comments to him that the recharge was very good for his well. Mr. Germinario advised Mr. Randazzo that this was the appropriate time to make the request from the applicant, but that the Planning Board has no authority to compel the applicant to comply with the request, nor is there anything in the ordinance to require them to provide this information to him, even if Mr. Randazzo contends that the applicant's hydrogeologist has exceeded the scope of the project. Mr. Germinario encouraged Mr. Randazzo to return to the Board when this matter will be heard again and the applicant may share the information at that time, advising that he should try to work this out with the owner/applicant. The applicant, Ralph Loveys, responded that he has reasons why he does not want this information released and did not want to discuss this in public. Mr. Germinario then noted that information required by the ordinance to be made public would be available to Mr. Randazzo, but not every piece of information is subject to public record, so he could discuss the matter privately with the owner, since it was an issue of private rights between the owner and Mr. Randazzo. If Mr. Randazzo feels that his rights were violated, then it was a private matter for a court of law.

Marsha Buttery, Wooley Road, was sworn in and addressed the Board regarding the Braemar at West Milford application. She advised the Board that she recalled the original application by Kerry Greene was for 25 houses, but after careful review, the number was reduced to 17, and at that time they discussed dedication of public lands. She also testified that the well testing data was not satisfactory at that time and soon after the property was sold to Braemar. Ms. Buttery contended that she was promised the well data from the monitoring of her wells, and when her well was opened, it was not chlorinated as required. She testified that she replaced her pump in January due to sludge and dirt in her water, and she only agreed to the monitoring to see how her well was working. She was concerned about adequate water supplies for the 17 house subdivision. Mr. Germinario advised that the applicant will have to comply with the new well testing ordinance and the results will be discussed at a hearing. Ms. Buttery also reported that she heard blasting going on and was concerned about damage to her house. Chairman Syme inquired if she recalled any talk about public trails, and Mr. Buttery testified that she recalled the owners attempting to give the property to the Township, but the Township felt the owner was trying to avoid the taxes on the property, so easements were proposed and accepted. With regard to the monitoring data, Mr. Loveys responded that initially the monitoring data was to be provided to the homeowners, but the Highlands was rescinded at the time the monitoring was to take place, so with the monitoring process halted, the equipment was removed, the data was not complete, and the report was never filed.

Richard Palinski, Wooley Road, was sworn in and addressed the Board regarding property he purchased 30 years ago at Block 10001; Lot 13, which adjoined the proposed subdivision. He expressed concern that he would be land-locked if the subdivision is approved and will not have access to his property. He explained that access was supposed to be through the end of the cul de sac, through 14 acres to access his lot. When Mayor Bieri inquired how he accesses it now, he said that he is land-locked, but was told he would have access with the new subdivision, and to get access now, he would have to go to the bottom of Bisset Drive.

Mr. Germinario advised Mr. Palinski to contact his attorney, since there is a matter of necessity especially if there is something implied that he would have access to his property.

With no one further wishing to address the Board regarding this major subdivision application, a **motion** was made by Mayor Bettina Bieri, with a **second** by Councilman Luciano Signorino, to **close** the public portion of the hearing for the Braemar at West Milford, LLC application.

Mayor Bieri inquired if Mr. Randazzo was correct in stating that the applicant was required to comply with the 300-foot buffers, and Mr. Ferreiro replied that if the Highlands determine that they are exempt, then they are exempt from the new requirements. Mr. Germinario advised the Planning Board that the approval would include *conditions precedent* for the aquifer testing and Highlands Exemption, and if the conditions are met, the approval reverts to this hearing date. He noted that the applicant cannot commence with the project until the aquifer testing is satisfied. Mr. Ferreiro interjected that in addition to the aquifer testing and the Highlands Exemption, the Environmental Commission will review the site and make a determination and report back to the Board. Mayor Bieri inquired if the Board professionals were satisfied with the plan, and Mr. Ferreiro replied that there were matters that he needed to coordinate with the applicant's engineer, and the plat will have to be revised per his report. Mr. McGroarty advised that he had nothing new to add.

Motion was made by Councilman Luciano Signorino, with a **second** by Steven Castronova to **approve** the final major subdivision application for Braemar at West Milford LLC, #0610-1910B, granting final subdivision approval, with conditions precedent, requiring that within 18 months of the date of this approval the Highlands Exemption will be reinstated, the applicant will comply with the Township's aquifer testing ordinance, and the applicant will meet or discuss with the Township's Environmental Commission the feasibility of creating hiking trails in the conservation easements, with proof that all these conditions have been met to the satisfaction of the Planning Board presented at a subsequent hearing.

Roll Call:

Yes – Mayor Bettina Bieri, Steven Castronova, Christopher Garcia, Robert Nolan, Douglas Ott, Councilman Luciano Signorino, Michael Siesta, Chairman Geoffrey Syme.

No – None.

Motion approved.

Mayor Bieri commented that she has great concerns about this application, but that the conditions are in place and the ordinance will be strictly enforced. Douglas Ott had similar concerns but feels that they are being met with the agreement that was developed. Councilman Signorino advised the applicant that he would like to walk the property for the purpose of determining the potential of hiking trails and will coordinate with the Environmental Commission and the property owners for a site visit.

EXTENSION OF TIME

JACK LEVKOVITZ

(Village On Ridge-Section II)

Amended Final Subdivision Application #0510-1744C

Block 5201; Lots 16, 19 & 20; Block 5303; Lot 1; R-3

Ridge Road; R-3 Zone

Seeking: Extension of Time for Final Major Subdivision Approval to meet conditions per Resolution No. 2011-14, with additional modifications of the conditions to be considered.

Prior to the hearing on this matter, Andrew Gargano and Robert Nolan were recused and left the dais. Anthony Reitano, Esq. of Herold Law, attorney for the applicant Jack Levkovitz, introduced himself to the Board and advised that attorney Rob Simon would not be present at this meeting. He advised that the applicant was before the Board to seek approval to use a public water system rather than establishing a private water system based on the numerous requirements from the NJDEP, who ultimately recommended the applicant to explore all options for a public water system rather than a private system. Mr. Reitano advised that the approvals sought by the applicant, Jack Levkovitz, at this hearing were for a time extension of final subdivision approval in order to complete the paperwork required for the public water system. Kevin Boswell, P.E., of Phillips Avenue, South Hackensack, NJ was sworn in as the applicant's engineer and expert witness and Mr. Germinario stated that Mr. Boswell had previously qualified himself for the Board and was accepted as civil engineer and planner for the applicant. Mr. Boswell submitted Exhibit A-1 and testified that in August 2011 the Board had approved a private water system for the applicant's subdivision, which required subsequent approval from the Mayor and Township Council, and this was received in November 2011 before the applicant applied to the NJDEP. The NJDEP did not provide approval for a private water system and recommended that the applicant pursue an approved public water system to service the proposed subdivision. Mr. Boswell advised that the applicant approached several companies, including United Water and Passaic Valley Water Commission, the later having a well located 1-mile away on Nosenzo Pond Road. PCVWC has been operating for several decades, services 140 homes in the Township, is well rated, and can supply 69 gallons per minute for an average of 99,360 gallons a day. The use of the other water company was technically not feasible for allocation and water gradient issues. Mr. Boswell testified that the use of Passaic Valley Water Commission made sense for several reasons, including an ample excess supply of water to service the wells. The company has been in existence for over 100 years, and their rates are consistent with the MUA rates. The applicant held discussions with the engineers and staff of the Passaic Valley Water Commission, and they were very receptive to the proposed subdivision being connected to their system. The applicant proposes to run a transmission line from the subdivision to the well system on Nosenzo Pond Road, and the water line would service both the Village on Ridge development and their current customers. Mr. Boswell reported that there were many issues to be

considered, and after meeting with the Board Engineer, it was determined that this was the best option and would present the least amount of problems, noting that it will require a greater financial commitment from the developer. With regard to fire hydrants, a transmission line will provide fire protection with the hydrants. He stressed that this was not a transmission line to extend to future development opportunities, but a transmission line to a water tank that will be installed at the proper location to provide water for the Phase I and II Village on Ridge subdivision. With regard to the 10 existing homes, Mr. Boswell testified that he had determined that the problem with the water issues experienced by the current homeowners was that the water tank at the top of the Old Milford Estates is, at the high water mark, only 24 feet above the street level of the highest point above Phase I, and at its best, the static water pressure is 12 psi, and drops 1 psi with each drop of two feet of water. He advised that the proposed system would be designed with the full compliance of the DEP and verified by the Board Engineer. Mr. Reitano interjected and informed the Board that all other conditions will remain, with the exception of the applicant seeking to establish a private water company. Mr. Boswell also advised the Board that the adjacent schools currently use wells for their water usage, but there are discussions with the Passaic Valley Water Commission for them to take over and provide connections for fire issues. Mayor Bieri inquired whether this plan would financially benefit the developer, and Mr. Boswell replied that it would not, but that it was the only feasible solution. Mayor Bieri inquired if the 69 gallons per minute was sufficient for the 50 additional homes and Mr. Boswell replied that it was more than sufficient. With regard to the recent resurfacing of Ridge Road, Mayor Bieri inquired if the applicant would restore it to the current conditions following installation of the water line, and Mr. Boswell responded that it would be installed in a single seam to limit the disturbance. When Mayor Bieri inquired whether the Board could make it mandatory that the applicant connect the existing 10 homes to the new system, Mr. Germinario advised that the Board could not require a mandatory hook up for the existing homeowners. Mr. Boswell noted that there is a current line that the MUA is operating, but the MUA would be amenable to the 10 existing customers becoming Passaic Valley WC customers since they have been unable to provide an adequate solution for the water supply issues. In addition, the applicant would be happy to serve them since it would help to have the additional customers on the new system, but they cannot mandate that they connect to the new system, adding that if it is feasible and the current homeowners agree, they can be connected. Board member Douglas Ott inquired about the proposed water line, and Mr. Boswell responded that the 8 inch water line would be installed about 4 feet below the frost line, and the line would run for 6800 feet, just over 1 mile. The proposed water tank would be between 80 to 100,000 gallons and would stand 65 feet tall on a 15 to 20 foot high bed. At the highest point, the psi will equal 27 psi, with 20 psi required. Board member Steven Castronova inquired about the proposed timeframe for the water line installation and subdivision, and Mr. Boswell responded that they should have their approval from the NJDEP by March 2013, and the line construction will take approximately 3 to 4 months. As for the subdivision itself, Mr. Boswell noted that it depends on how fast the homes sell. With regard to traffic control when the water line is installed, Mr. Ferriero advised the Board that this is usually covered in the developer's agreement. With regard to potential drainage issues after the water line is installed, Mr. Ferriero noted that a performance bond is posted to insure that the work is performed properly. Mr. Ferriero further advised that the use of a financially stable water company was a much better solution. Several of the Board members were concerned that the current homeowners are having water issues and connecting them to the new water system was discussed.

Following discussion by the Board, Chairman Syme opened the hearing to public inquiries and the following addressed the Board:

Dan Trout, 26 Heritage Drive, was sworn in and addressed the Board, noting that he would have to rely on the engineers for their expertise on the adequacy of the proposed connection to the PVWC system. Mr. Trout noted that the anticipated rates should not be more than the MUA rates, and the pressure would be better, but he was concerned about the sewage service that they would still need, and the current system is not in compliance with capacity. He inquired if the MUA is in the position to add 50 more houses to their sewer connections. Mr. Trout wondered what it would take to bring the MUA sewer treatment plant up to code.

Carl Glaser, 107 Alpine Ridge Road, was sworn in and addressed the Board regarding the proposed water tank, advising that the tank will be located close to his house. Mr. Ferriero noted that the water tower was proposed for the same location whether it was public or a private water system. Mr. Glaser acknowledged that he had recently moved into his home on Alpine Ridge Road and was pleased to see that the developer had cleaned up the debris that was strewn throughout the subdivision site. He did note that there were plastic oil containers in the woods and was not sure if they had been removed.

With no one else present wishing to address the Board regarding the Village on Ridge II matter, the public portion was **closed** on a **motion** by Mayor Bettina Bieri with a **second** by Councilman Luciano Signorino.

Chairman Geoffrey Syme inquired about the sewer connection for the subdivision, and Mr. Germinario advised that the applicant has a sewer allocation from the MUA, and further advised that the Board is not in a position to look behind that since it is between the MUA and the NJDEP. Mayor Bieri inquired if it was a current or old allocation, and Mr. Germinario suggested that the Board could make it a condition of the extension approval that evidence should be presented that there is a viable sewer connection allocation. Mr. Reitano advised the Board that the applicant, Jack Levkovitz, has an allocation permit and the infrastructure has been installed. With regard to the extension, Mr. Reitano advised that a 7-month extension was permitted due to tolling of the time for delays in getting the Highlands reinstated and litigation, but the applicant was requesting an extension to June 30, 2013. Chairman Syme noted that this was the fourth extension being sought, and Mr. Germinario advised that the MLUL recognizes a tolling time period, and in this case during the time that the Highlands was reviewing their appeal and the litigation was proceeding, the clock technically stopped. Therefore, he advised, if all the conditions are met within the 7

month time period, the applicant can file the subdivision plat. Mr. Germinario added that the tolling period actually extends to July 31, 2013, but the applicant is only seeking a time extension until June 30, 2013. Councilman Signorino inquired about the sewer issue raised by resident Dan Trout, and wondered whether the MUA can afford to add on 50 additional homes to the system, and Mr. Ferriero commented that the additional homes would increase the denominator by 50. Mayor Bieri observed that she was not happy with the project because of the added customers using the MUA sewer system, but noted that the water source was a better solution. Chairman Syme concurred with the comments, adding that this matter has been back and forth over the water concerns, and it seems to have been resolved with this proposal, and although adding more homes to a failing sewer system was an issue, the Board had no authority in this regard.

With no further discussion a **motion** was made by Councilman Luciano Signorino, with a **second** by Steven Castronova to **approve** a six month extension of time, or until June 30, 2013, of the final major subdivision for Jack Levkovitz, #0510-1744C, with conditions, and amending approval to include a public water system.

Roll Call:

Yes – Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Christopher Garcia, Douglas Ott, Councilman Luciano Signorino, Michael Siesta, Chairman Geoffrey Syme.

No – None.

Motion approved.

APPLICATIONS

SUN YOUNG JOO

Major Soil Removal/Fill Permit #PB-05-12-05

Block 10402; Lot 12

55 Green Terrace Way; R-4 Zone

Seeking: Major Soil Removal/Fill Permit approval for an existing 4-acre residential site, with approximately 14,900 s.f. of new fill brought to the subject site for the purpose of re-grading.

Gerald Gardner, P.E., engineer for the applicant Sun Young Joo, was sworn in and qualified himself for the Board. Also present was Donald Kim, Esq., attorney for the applicant. Mr. Kim addressed the Board, advising that the application before the Board was for a major soil movement permit at 55 Green Terrace Way. He noted that the owner of the subject property was present at this meeting. Mr. Kim referred to the permit application and assumed that the members of the Board and Board professionals had review the application and report, and he acknowledged it was the applicant's intent to comply with the technical requirements of the Board Engineer's report. Board Engineer Paul Ferriero provided some background information for the Board, stating that fill was placed on the subject site, large amounts of trees were removed from the applicant's property, and there was major downstream impact after this work had been done. The issue before the Board is what needs to be done to resolve the issues that have resulted, and he advised that an application such as this meets the standards for the major stormwater rules. He noted that currently the water goes into a stormwater system and shrinks to a small pipe on the adjacent neighbors property. Investigation has revealed that there is an easement, but the connection to the system is not in the easement. Mr. Ferreiro continued that any solution would require cooperation from the Witherspoons, the neighboring property owners. He cautioned that there were some legal issues with the easements, and there were more engineering requirements to be met, but the Board can waive the standard if there is down stream mitigation. Mayor Bieri commented that, rather than make the applicant change his property back to pre soil fill condition, she suggested that the property be stabilized with vegetation and corrective drainage measures be in place. Mr. Germinario observed that the plan before the Board does not reflect these corrective measures.

Gerald Gardner, P.E., testified that the drainage system Mr. Ferriero referred to existed before Mr. Joo made any changes to the site, even prior to the Joo's purchasing their property. He was not saying that the Joo's did not exacerbate the problem with the removal of trees and the re-grading of the site, but he was not certain that a sedimentation basin would suffice. Mr. Gardner testified that the applicant was not in violation of the ordinance with the removal of the trees, and Mr. Ferriero countered that more than an acre was disturbed on the site. Exhibit A-1 was presented into evidence, and Mr. Gardner gave an overview of the site, indicating the drainage from the pipe, and asserting that the fill brought to the site purportedly reduced the erosion since the soil was mainly a sandy consistency. He suggested that the pipe may be broken or clogged, and during a recent hurricane the eroded soil ended up in the neighboring property owners pool. With regard to the tree removal, Mr. Gardner stated that it was fairly widespread and occurred on other areas of the site. Mr. Kim advised the Board that the major hurricane that hit the region in 2011 was the cause for the damage to the Witherspoon's property, but the applicant will do whatever they can to try to rectify the situation, but he will not allow his client to make a contribution to any project that can be used against him or for any liability that he would suffer as a result of this. Responding to a letter from the Township Attorney, he said that whatever his client does is done in good spirit. Mr. Germinario responded that this was not the function of this Board to determine culpability with regard to any of these issues, and the Board just has to be satisfied from a technical standpoint that the mitigation is going to be effective in addressing the problem. He added that the Township has its own issues, which they have communicated to him, but this was an autonomous Board and it was not in a position, nor is the Board empowered, to make findings of liability between his clients and Mr. Witherspoon, and that it was for a court of law to determine.

The matter was then opened to the public for comment by Chairman Geoffrey Syme. The following addressed the Board:

Mark Fredericks, 71 Green Terrace Way, was sworn in and testified that he lived next to the Joos, south of the subject site, and advised that he has lived at this location since 1988. He referred to the builders for the

development, Larry Capassy and Jeff Lutz, and testified that there were deed restrictions, that expired two years ago, stipulating that the architecture and landscaping had to conform to the surrounding natural elements. Mr. Fredericks stated that he was shocked when the trees were removed from the Joo's property, the basins became filled with the sediment, and silt and dirt ran from his property to his neighbors. He recalled that the developer installed the drains and the Township took over the maintenance of them when the roads were dedicated. He was present at this hearing as a friend of the Witherspoons, and although he has tried to be a good neighbor, he suggested that communication problems could be the issue with the Joos. Mr. Fredericks also testified that he did not believe the existing drainage pipe was supposed to remove water from the Joo's property to the Witherspoon's property.

Barbara Ziegler, 82 Green Terrace Way, was sworn in and testified that she lived at her current location on Green Terrace Way for 12 years. She advised that when the Joo's clear cut their trees, she was also shocked that the Township allowed them to cut almost 100% of the trees. Ms. Ziegler understood that the applicant was intending to landscape, but with the excess amount of soil brought in to the site, the water collects into the swales and runs in sheets off the site. She noted that she has a degree in geology and is an earth science teacher, and she stated that the soil on the Joo's property does not allow percolation. She also noted that there were problems with several storms that occurred, not just a hurricane. Ms. Ziegler also commented that whatever engineering is approved under the soil permit application, hopefully it won't cause problems for her property. Mr. Gardner interjected that there was a stop work order and the site has remained untouched until this matter is resolved. Ms. Ziegler testified that there were water problems before the Joo's purchased the property, and they had ice issues on their driveway. Mr. Gardner noted that they have maintained that this problem did not just occur with the recent work at the Joo's site, and that there were issues prior to their purchasing the property, but the proposed plan should rectify the issues.

Scott Witherspoon, 70 Green Terrace Way, was sworn in and testified to the Board that he moved into his current home in 2002. He thanked his neighbors for speaking on his behalf at this hearing, especially since they have witnessed the stormwater problems each time there is a storm. He advised the Board that a third neighbor on the lower side of the Joo residence, Jeff Wojetowicz, who was not present at this meeting, met with Mr. Witherspoon the prior week and indicated that he, too, was experiencing drainage problems from the back of the Joo's property. Mr. Witherspoon testified that his issues resulted from the site work on the front of the Joo's property, but added that removal of 4 acres of trees, and installing hundreds of truckloads of soil, changed the topography and water flow. He referred to the letter from Gardner/Houser Engineering and the indication that the incident was the result of the of Hurricane Irene in August 2011. Mr. Witherspoon stated that the first occurrence was in June of 2011, subsequent to the soil importation and the tree cutting. He testified that the water was spewing straight up out of the pipe, came down his driveway, along with most of his landscaping, mulch, asphalt, and stone, and deposited it into his in-ground pool. He had the pool drained, cleaned and repaired, for approximately \$5000. The incident damaged his landscaping in an amount close to \$3,000., and driveway repair estimates were about \$15,000. Mr. Witherspoon testified that he had two pumps running and also opened a manhole to try to drain the water from his property recently. He stated that he did not create the problem and wanted it fixed. He advised that zoning violations were issued on June 27, 2011, as well as violations from the HEPSCD, but there have been no fines or penalties imposed on the Joos, to date, and he suspected that there was no incentive for them to rectify the situation. Mr. Witherspoon was not aware of the open retention basin on his property until the storms hit, but he believed that the drainage situation on his property was exacerbated by the clear-cutting of the trees by the Joos. Mr. Witherspoon displayed photos of his pool from June 2011 and stated that he had been dealing with this situation for 16 months. He also advised the Board that he has videos of the water going into the retention basin and draining to his property. He did note that the DPW has brought sandbags over and assisted during storms. Mr. Witherspoon was concerned about the source of the soil and whether it had been tested. He asked for the Board and the Township to make a determination about a solution that can address the issues. Mr. Germinario inquired whether Mr. Witherspoon is willing to cooperate with the potential solution that has been proposed, and Mr. Witherspoon responded that he would cooperate with a plan that would solve the problem, and inquired about the plan since the winter weather was approaching and icing on his property and driveway results from the drainage problems. He stated that he wanted a definitive plan, and desired constructive cooperation between himself, the Township, and the Joos. Mayor Bieri acknowledged that Mr. Witherspoon had been dealing with the drainage issues for some time, and inquired if Mr. Witherspoon contacted the Township when Mr. Joo started to remove the trees. Mr. Witherspoon replied that he contacted the Township when he noticed the major soil movement on the Joo's property, but did not contact the Township when the property was clear-cut. Mayor Bieri advised him that the applicant was before the Board to try to rectify the situation, and if a permit is not issued, Mr. Joo will be forced to replant the trees and return the soil to its original condition. She addressed Mr. Kim and Mr. Gardner, stating that, based on the testimony and evidence presented at this hearing from the neighboring property owners, the drainage system was working and adequate until their client caused the devastation by removing the trees and bringing soil to the site.

Mary Hall, 31 Green Terrace Way, was sworn in and testified that in 2011, her basement flooded for the first time after living in her home for 11 years. She has standing water in her back yard which had never occurred before. She also testified that water runs down the road in front of her house. The Board discussed with the Board Engineer how the drainage basins would solve the issues for all the residents. Board member Steve Castronova visited the site, and made comments about the topography and drainage issues. Board member Robert Nolan inquired about the source of the soil and whether there is any possible contamination.

Victor Joo, Boonton, NJ, son of the applicant Sun Young Joo, was sworn in and testified before the Board. Mr. Joo expressed concern about the water issues experienced by Mr. Witherspoon and stated that he would not want to have them occurring in his own home. He asserted, however, that the trees were removed from his father's property in 2008 and 2009 and there were no problems prior to 16 months ago, suggesting that

the soil may have caused a problem, but the trees were not the issue. He testified that the trees were dying and had to be cut, so they hired a professional tree cutter who was told to contact the Township to determine if it was legal to remove so many trees. Mr. Joo stated that his mother had planted over 100 shrubs to replace the dying trees and they try to maintain their property. He testified that he saw an advertisement in the newspaper for free soil, and when they contacted the contractor they discovered that the soil came from the Mahwah Reservation. The soil was rocky and sandy and retains water according to their engineer, and he did was not aware of regulations for soil movement. With regard to the storm drains, Mr. Joo stated that the Township approved the drains since they were always there, as far as he knew. Mr. Joo stated that his family did not want problems with the neighbors and they want to reside peacefully. He was not sure who was ultimately responsible, but he did not feel that they were entirely to blame, and his engineer has documented that only about 30% of the water comes from their site. Mayor Bieri interjected that the Board was not accusing the Joo's of acting maliciously, but there were tree cutting permits required and the tree removal and the soil movement dramatically changed the property. The Board briefly discussed the soil source and Mayor Bieri suggested that if came from a lakebed, that it would most likely keep the water from permeating.

Board Engineer Paul Ferriero advised that the soil movement permit is being requested after the fact, but there were stormwater regulations that needed to be addressed, adding that this Board does not review tree permits or tree removal, only as it relates to stormwater and change in topography, terrain, etc. He noted that the issue was whether to do a reduction flow or mitigate the flow, extend the pipe to get the water contained, and re-vegetate the property. He advised that a plan needs to be submitted to show how the pipe will be reconnected, there needs to be submission of a landscaping plan, and top soil needs to be brought in to grow new vegetation. The Board could consider approving downstream improvements or stormwater improvements on the subject property. With regard to water that flows to Lot 11, Mr. Ferreiro suggested better ground cover, and swales for surface run-off to the rear. He stressed that the neighbors need to agree to work together to resolve this. Mr. Witherspoon requested that a storm drain be tied into the drainage pipe, and inquired about the 3 options being considered. Mr. Ferreiro noted that he needed to see more information from the applicant's engineer to make a determination about the best option. Chairman Syme advised that more information needs to be exchanged and the issues will not be solved at this meeting. It was determined that the engineers would meet to discuss their options about the existing and potential drainage issues and reconvene at the December 6, 2012 regular Planning Board meeting. Mayor Bieri suggested that the applicant have the soil testing and the results submitted based on the concerns of the residents and Board members. Mr. Ferreiro advised that the soil standards need to be verified, and Mr. Gardner stated that the permeability had been established. Mr. Ferreiro suggested that silt fences would help, although with the anticipated storm, it may not help too much. Mr. Witherspoon was requested to return to the next hearing with his photo exhibits.

Motion by Michael Siesta with a **second** by Andrew Gargano to **close** the public portion of the hearing.

This matter was **carried** to the December 6, 2012 regular meeting of the Planning Board. Mr. Germinario advised that no new notice is required.

MEMORIALIZATIONS

RESOLUTION NO. 2012-14

INSERRA/WEST MILFORD, LLC (SHOPRITE)

Amended Preliminary & Final Site Plan #PB-08-12-06

Block 6303; Lots 15 & 16

Marshall Hill Road; CC Zone

Granted: Amended Preliminary and Final Site Plan approval for the renovation and expansion of the existing Shop Rite Supermarket, additional retail space, construction of a new retail building in the area of the former theater, new building façade, landscaping, lighting and improvement to the driveways and parking lot areas served by the Shopping Center. This application amended the prior site plan application approved by the Planning Board on February 5, 2009.

Motion was made by Andrew Gargano, with a **second** by Councilman Luciano Signorino to **approve** Resolution No. 2012-14 for Inserra/West Milford LLC (Shop Rite) granting amended preliminary and final site plan approval.

Roll Call:

Yes – Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Andrew Gargano, Christopher Garcia, Douglas Ott, Robert Nolan, Councilman Luciano Signorino, Chairman Geoffrey Syme.

No – None.

Motion approved.

RESOLUTION NO. 2012-15

RESOLUTION ADOPTING THE HIGHLANDS PRESERVATION AREA MASTER PLAN ELEMENT FOR THE TOWNSHIP OF WEST MILFORD, COUNTY OF PASSAIC, STATE OF NEW JERSEY

Motion made by Andrew Gargano with a **second** by Robert Nolan to **approve** Resolution No. 2012-15, adopting the Highlands Preservation Area Master Plan Element. The Board approved this resolution by **unanimous consent**.

NEW BUSINESS

2013 Meeting Dates

Motion made by Andrew Gargano with a **second** by Chris Garcia to **approve** the meeting dates for 2013. Motion was approved by **unanimous consent**.

ZBOA Annual Report to the Township – This matter was carried to the next meeting to allow the Board Planner time to review and comment on the report.

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

Board member Linda Connolly inquired about a prior minor subdivision and site plan that had been before the Planning Board for Vincent Lanza, 1383 Macopin Road. She reported that she had been advised that the owner was planning to open a restaurant in the former Vreeland Store. Mr. Germinario requested that the Secretary send a memo to the Zoning Officer to confirm that the applicant/owner is compliant with all Planning Board and Zoning Board of Adjustment approvals.

Approval Of Invoices – Board Professionals

The Board reviewed the invoice report for the invoices submitted by the Planning Board professionals for services performed during the month of September 2012. The invoices were **unanimously approved** for payment on a **motion** by Andrew Gargano with a **second** by Douglas Ott.

MINUTES

The Minutes for the June 28, 2012 Regular Meeting were **approved** by those members eligible to vote on a **motion** by Robert Nolan with a **second** by Chris Garcia.

The Minutes for the August 23, 2012 Regular Meeting were **approved** by those members eligible to vote on a **motion** by Steven Castronova with a **second** by Chris Garcia.

The following documents were reviewed by the Board and filed:

HIGHLANDS WATER PROTECTION AND PLANNING ACT

1. Copies of additional documents submitted, dated September 24, 2012, required by the NJDEP for consideration of a Highlands Applicability and Water Quality Management Plan Consistency Determination application previously filed by Wander Ecological Consultants for Dautaj, Restaurant (Momentos), 374 Morsetown Road, Block 4701; Lot 38.02, addressing the items per notification of Administrative Incompleteness from the NJDEP on July 11, 2012.
2. Notice of an application being submitted to the NJDEP, dated October 8, 2012, for a Highlands Applicability and Water Quality Management Plan Consistency Determination from Weissman Engineering Co., for Lobosco, Vine Avenue and Ridge Road, Block 5603; Lots 2.01 and 2.02 for the construction of a single family home, not for use by the owner or immediate family member.
3. Notice and copy of an application, dated October 11, 2012, received from Murphy McKeon, P.C. for Chelsea at Bald Eagle, regarding a Highlands Applicability Determination for the proposed addition of a 20-bed facility to an existing assisted living facility located at 197 Cahill Cross Road, Block 5301; Lot 1.

NJ DEPARTMENT OF ENVIRONMENTAL PROTECTION

1. No Further Action – Covenant Not to Sue notice, dated September 24, 2012, received from the NJDEP, regarding the removal of a 550 gallon #2 heating oil UGST for 36 Cahill Cross Road, Block 5307; Lot 9, Kurt Rifenbark.
2. Copy of a GP #25 Permit, dated October 12, 2012, #1615-12-0025.1 FWW 120001, received for Robert Morrison, 1673 Macopin Road, Block 8401; Lot 12 regarding the repair of a malfunctioning septic system.
3. Notice from the NJDEP, dated October 3, 2012, that 9 potable wells will be sampled in the vicinity of the Getty Service Station #57215, Compass Avenue, scheduled for October 24, 2012.
4. No Further Action – Covenant Not to Sue notice, dated October 10, 2012, received from the NJDEP, regarding the removal of a 550 gallon #2 heating oil UGST for Brenda Gross, 207 Long Pond Road, Block 4007; Lot 2.
5. Copy of Notice of Intent to Terminate from the NJDEP, dated October 10, 2012, received for William Baird, 7 Mountain Circle North, Block 5901; Lot 2, regarding failure to conduct remediation in accordance with NJAC 7:26E, and failure to submit reports in a timely manner pursuant to NJAC 7:26C, requesting compliance within 30 days of receipt of the notice.

6. Copy of a request to the NJDEP, dated October 16, 2012, from EcolSciences, Inc for Environmental Construction Company, regarding the Re-Issuance of a GP # 6, originally issued on January 17, 2008, for Block 12110; Lot 5.03, Inwood Road, for the construction of a single family dwelling.

CORRESPONDENCE

1. Notice received October 17, 2012 regarding the scheduled hearing before the Planning Board for an extension of final major subdivision approval and to amend certain conditions of Resolution 2005-42, granting said approval to Jack Levkovitz dba Village on Ridge II.
2. Notice regarding the hearing scheduled on October 25, 2012 before the Planning Board for a Major Soil Movement Permit for Sun Young Joo, 55 Green Terrace Way, Block 10402; Lot 12.
3. Notice regarding a hearing scheduled on October 25, 2012 before the Planning Board for a Final Major Subdivision approval with Conditions for Braemar at West Milford LLC, Block 10001; Lots 14, 19, 20, 23, Wooley Road and Virginia Lane.
4. Hudson Essex Passaic Soil Conservation District certification of the soil erosion and sediment control plan, dated September 18, 2012, for Twins Realty Group LLC, 937 Burnt Meadow Road, Block 3906; Lots 9 & 10, Block 6002; Lot 39.01.
5. Notice dated October 9, 2012 from the Passaic County Planning Board, regarding Oak Ridge Road Associates, Block 15901; Lots 1 and 2, 195 Oak Ridge Road, requesting revised plans and copy of the resolution and/or meeting minutes of the West Milford Planning Board approval confirming that no sidewalks are required by the Board.

ADJOURNMENT

With no further business to come before the Planning Board, a **motion** was made to **adjourn** the Regular Meeting of October 25, 2012 at **11:48 p.m.** by Robert Nolan with a **second** by Councilman Luciano Signorino.

Approved: February 7, 2013

Respectfully submitted by,

Tonya E. Cubby, Secretary