

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

October 25, 2018

Regular Meeting

Chairman Andrew Gargano opened the October 25, 2018 Regular Meeting of the West Milford Planning Board at 7:03 p.m. with a reading of the Legal Notice followed by the Pledge of Allegiance.

ROLL CALL

Present: Steven Castronova, Christopher Garcia, Warren Gross, Douglas Ott, Councilman Luciano Signorino, Geoffrey Syme, Mayor Tim Wagner, Glenn Wenzel, Chairman Andrew Gargano, Board Attorney Thomas Germinario, Board Planner Jessica Caldwell.

Absent: Linda Connolly, Michael Siesta, Board Engineer Paul Ferriero.

Chairman Andrew Gargano requested Mr. Castronova sit on the Board for Linda Connolly and advised that a quorum was present to hold this regular meeting.

The public portion was opened by Chairman Gargano and the following addressed the Board:

PUBLIC PORTION

Maureen Finkelstein, 63 Lake Park Terrace, addressed the Board to express her opposition to Airbnb facilities. She commented that a residence adjacent to her property has an absentee owner who resides in Boston and rents out the property as an Airbnb. She noted that there are people frequently coming and going, and did not expect that the house next to hers would be a hotel, especially with the high taxes that she pays. Ms. Finkelstein remarked that one of her neighbors had reportedly paid \$80,000. to renovate her house to accommodate an Airbnb, but Ms. Finkelstein has spent more than that to renovate her own home and pays more taxes as a result. She expressed concerns about her safety with the owner living in Boston and strangers coming on a daily basis into the neighborhood with no one to monitor them. Ms. Finkelstein suggested that the Board consider including a one week minimum or more for short term rentals.

Patricia Romano, 49 Forest Lake Drive, addressed the Board regarding her concerns about the Airbnb matter, and recounted the assistance that she received from her neighbors when she had a recent health emergency. She stressed the importance of neighborhoods and neighbors, especially in areas that are zoned for single family residences. She felt that an Airbnb facility with transient renters was essentially a multi family residence and business, and it should not be in locations where it is not permitted. She understood that it may not be able to be banned completely, but including minimum stay limits would be more acceptable.

Doris Berry, 44 Old Lakeside So., addressed the Board with her concerns about Airbnb - short term rentals, remarking that she considers her home as a sort of paradise with a quality of life, sense of neighborhood, and a safe environment that should not be taken for granted. She noted that recently her neighborhood has changed, with Airbnb vacationers throughout the week, and this has affected her quality of life. She expressed safety concerns with the transient renters traversing in and out of the neighborhood, and noted that there was no way to determine if they could pose a danger to the residents, and may possibly including drug dealers, pedophiles, or terrorists who could be "casing" the surrounding properties. She intended to remain in the Township and continue to pay her taxes, but does not want to reside in a hotel zone in a residential neighborhood. Ms. Berry observed that many Bergen county towns have banned the Airbnb facilities due to some of the concerns she noted.

Steven Klein, 12 Sade Terrace, addressed the Board, noting that he appreciated the comments from the residents, but observed that the Township has a noise ordinance and police department to protect the residents. He opposed anyone taking away an owner's property rights, and that the people present should not be deciding this issue. He suggested that a Township vote should be taken on this matter. He understands that there are issues with remote ownership, but regulations could solve the issues. Based on his research regarding the average Airbnb business, Mr. Klein did not feel that teenagers were

the typical renters. He suggested that the Board consider including a ban on remote ownership for Airbnb facilities in the draft ordinance. He wanted to hear more facts about the matter, and noted that some towns have reported positive results, with the average weekend expenditures by Airbnb renters to be in the range of \$240 – \$700.

Robert Kaszka, 23 Forest Lake Drive, addressed the Board regarding the Airbnb – short term rental issue, advising that he has been a homeowner for 45 years, and although he was not requesting that the Board consider including a ban on the Airbnb units completely, he felt that the goal should be to restrict commercial businesses in residential neighborhoods. He inquired why the Township was permitting these businesses to operate, and understands that there were some people who needed the extra income, but they could be using their home as a primary residence and possibly rent out rooms. He felt that two and three night rentals should not be permitted, especially since there are some sites listed in his community as being available 365 days a year. He noted that Woodcliff Lake, Paramus, Palisades Park, Fairview, Closter, Ridgewood, Wyckoff, Fort Lee, that have adopted ordinances restricting the short term rentals to 30 days minimum. He encouraged the Board to take the lead and develop an ordinance that will enhance the residential communities and the overall value of the lakes. He inquired how the Board members would feel if they had an adjacent neighbor renting their home out every few days to strangers. He expressed that the longtime homeowners are passionate about their community and, as members of their community, they take care of each other, but Airbnbs don't.

Ron Sherry, 31 Forest Lake Drive, expressed to the Board that he opposes Airbnb facilities for the reasons stated by the previous residents who addressed the Board, and noted that he resides next to a house that rents out to Airbnb customers all year. Over the 4th of July weekend, two people rented the house and 40 young people came to stay, partying all weekend, and causing disruptions to the lake and neighborhood. He observed that Miami, Florida restricts rentals to a minimum of 6 months, and incurs \$20,000. in fines for illegal Airbnb facilities. His family has owned the house he resides in for over 60 years, and now it is like living next to a motel, with different renters two to three times per week and strangers fishing off of his dock.

With no one else present from the public requesting to address the Board, Chairman Andrew Gargano **closed** the public portion on a **motion** made by Steven Castronova with a **second** by Councilman Lou Signorino, followed by a few comments from the Board members.

Chairman Gargano thanked the attendees for expressing their opinions of the Airbnb – Short Term Rental issue. He noted that the Board had received from the Planner the first draft ordinance for review prior to the ordinance being referred to the Council. He remarked that there were public comments received following the last meeting in September that the Board also reviewed. Councilman Lou Signorino commented that there were some good points in the ordinance, but it was difficult to say how the residents who expressed concerns could actually be helped. He observed that they had very valid concerns, but felt that the ordinance did not fix the problems that exist, and believed that it just created more “red tape and money” from people. Chairman Gargano stated that the request to draft an ordinance came from the Council, and the Board was merely trying to respond to the request. Councilman Signorino expressed that he did not feel that it addresses the issues that have been raised. Chairman Gargano requested that the draft ordinance be posted on the Township website and have copies available for the public to review. Board member Chris Garcia requested that an explanation of the process be provided for the public.

Board Planner Jessica Caldwell provided some background information regarding the issues that precipitated the development of the first draft ordinance. Following several Ordinance Subcommittee meetings, at which time this matter was discussed, it was determined that there were basically two ways to address the Airbnb – short term rental matter. One way, she advised, was to address it by banning it completely, as some towns have, but the Subcommittee observed that homeowners will still rent out units regardless of the ban. Ms. Caldwell advised that the second approach that was considered was to regulate and enforce the rentals. Since it was referred to the Board by the Council, they are obligated to draft a document that would address the concerns that have been expressed. She noted that this is just the first draft ordinance for review, but it essentially creates a licensing permit where the owner would have to address health code issues, designate a person for emergency contact, limit the number of people and times that a residence is rented, with one rental occupancy in a home. In developing restrictions, it is an attempt to address the concerns of the existing residents with regulations. Ms. Caldwell observed that

there are several units existing in the community with at least 130 active Airbnb facilities in Passaic County, with rentals typically 3 nights a month.

Councilman Signorino commented that he read the ordinance and wanted to compromise on the requirements since he was concerned about the cost and extra work for staff. After several comments, he felt that he would recommend to the Council that they not consider introducing the ordinance when it is referred to them for consideration. He wanted to take a step back and get input from the town residents on this issue. He suggested that remote rentals may be considered for regulation. Chairman Gargano advised that the fees that are suggested in the ordinance are included to cover the cost of inspections and staff who would administer the ordinance requirements so that the taxpayers would not have to bear the burden. Councilman Signorino remarked that he thought it was just another vehicle for taking money from the property owners and requested copies of ordinances that are on the books in other towns. Mayor Tim Wagner commented that it was the Planning Board's role to research this issue and obtain input prior to referring a document to the Council. He noted that he would not want to be a neighbor of an Airbnb facility, but he also understood that people use it as a way to generate income. He recommended that the Board continue to review the matter and develop an ordinance with guidelines since the Township does not currently have hotels or Bed and Breakfast facilities available. Mayor Wagner expressed that this ordinance should not be done in haste, but that it should be considered further, adding that there have been some towns that have had success with the short term rentals. Board member Warren Gross commented that, following review of the ordinance, he noted 6 pages where the owner will have to pay fees and felt it would create significant costs for the property owner. Mayor Wagner noted, however, that it needs to be treated as the commercial venture that it is. Mr. Gross suggested that there were tax liability issues that could result, as well as depreciation of property if it is a commercial venture. He suggested that a time period should be included in the ordinance that can be easily controlled, not day to day rentals, but something that the residents can live with. He remarked that he lives in a lake community and has a dock on the lake, and he and his neighbors "look out" for each other. Board member Steven Castronova suggested that the Council review the draft ordinance and possibly the memos from the various departments who have provided comments.

Board Attorney Thomas Germinario advised that the short term rental matter is new to various municipalities, and although they may have adopted ordinances regulating it, the wheels of the judicial system move slowly. He has not seen a judicial review of any of these ordinances, and although there may be some unrecorded decisions that he is not aware of, he has not seen a recorded decision, to date. He noted that there may be a constitutional issue with the possible taking of property rights as implied by one of the members of the public. He continued to note that the traditional view of property rights of someone who has fee title ownership of a property has the right to lease that property, whether for short or long term. He is unaware of any court decision that states that the right can be taken away without some very strong findings in terms of harm, and the necessity of exercising the police power to limit those rights. As an attorney, he feels that the Board's Planner has taken the right track in terms of seeking to regulate rather than seeking to ban. He further observed that banning short term rentals may have some constitutional problems associated with it. With the draft ordinance presented for review at this meeting, Mr. Germinario advised that extreme behavior can be somewhat controlled by removing a permit from a property owner. Since a permit is required to operate these facilities, if some of the concerning behaviors and issues that have been expressed by the residents do surface, the ordinance would allow the municipality to remove the permit. He thought that the ordinance may be at the limit of what we are constitutionally allowed to do. With regard to absentee ownership, there are most likely equal protection and discrimination laws in place, and banning absentee ownership for short term rentals would probably not stand up to scrutiny in the courts. The municipality is restricted in what they can or cannot do with the limits that are in place constitutionally. Mr. Germinario expressed that the draft ordinance was a conservative document with a good approach to the issue, and although it may not be the end result, with further revisions, etc. that may be needed, from a legal standpoint, he felt that the general approach is a sound one.

Ms. Caldwell advised the Board that she will make some revisions and incorporate the comments that were received from the Township departments, the Board members, and the public. She will attempt to address nuisance issues with the regulations, which seems to be the main concern of the various departments who have provided comments. Also, trying to avoid neighboring property owner issues, and including requirements that the rental facility has appliance and equipment working properly, with water and septic testing completed and in good working order. Mr. Garcia inquired about the absentee ownership

issue and suggested that a local property management company or representative be required. Ms. Caldwell noted that one of the primary provisions is that a responsible party has to be available for the unit and within a reasonable distance to be able to respond within a 24 hour period. Mr. Garcia noted that with a rental property he owned in the past, they had a property management requirement for owners who did not live on the premises. He noted that this provides a certain level of comfort, and will allow someone to respond physically to any issues that may occur on a property. He inquired if this draft ordinance would go back to the Subcommittee, and Chairman Gargano confirmed that it would be reviewed before the next Planning Board meeting. He requested that the public email the Planning Department and provide feedback on the draft ordinance that will be posted on the website. Mr. Garcia observed that Greenwood Lake and Warwick NY compete with West Milford for tourists and dollars, and suggested that Ms. Caldwell review the 2 page ordinance adopted by Warwick NY.

Mr. Gross inquired how the MLUL deals with the short term rentals, and Ms. Caldwell responded that it does not specifically address it. Mr. Germinario noted that there have been cases where zone changes have been proposed to restrict owner occupancy only, and they have been struck down by the courts. The issue of short term versus long term has not been dealt with, but the MLUL essentially says that the rights of a property owner cannot be eliminated by ordinance with regard to renting or leasing their property. Ms. Caldwell commented that with development applications, the Board cannot dictate that houses are only owner occupied. She further advised that she has been tracking this issue for the past five years, especially since Zoning Officers started to discover these short term rentals in many of the municipalities that she works for. They began to observe how the larger cities were addressing the issue first, but it is a recent ongoing issue that has not been tested in the courts and fully fleshed out. Mr. Germinario has not seen this issue addressed in any court, or at least that directly confronts the matter of whether you can ban or eliminate the short term rental rights of a fee title property owner. When it does go to the courts, he feels that it will be a long process that may end up in the Supreme Court.

Following discussion, Board member Geoff Syme clarified that the Planning Board would not be the entity that would vote on the adoption of the Short Term Rental ordinance, and Chairman Gargano concurred, noting that this matter will be up to the Council to decide if they want to introduce the ordinance. Board Attorney Tom Germinario advised that if the Township Council decides to introduce it, it will come back to the Planning Board for discussion and a recommendation. Chairman Gargano stated that this matter will be reviewed again by the Ordinance Subcommittee at their meeting on December 6, 2018 prior to the regular meeting.

APPLICATIONS

NEW APPLICATIONS – None.

PENDING APPLICATIONS – None.

MEMORIALIZATIONS – None.

NEW OR ONGOING BUSINESS

West Milford Planning Board 2019 Meeting Dates – The Board members reviewed the list of meeting dates for 2019. The Secretary advised that each time a meeting is cancelled, the advertisements cost about \$5. to \$7. each, so she inquired whether the Board wanted to continue scheduling two meetings a month. The Board members concurred that this was a nominal amount to pay for the flexibility it afforded the Board professionals, the applicants, and the Board members with the meeting schedules. The proposed meeting dates were subsequently **approved** on a **motion** by Steven Castronova and a **second** by Warren Gross.

Bed & Breakfast and AirBNB Facilities – Chairman Gargano advised that this matter has been under review by the Ordinance Subcommittee and they will meet to discuss revisions to the draft ordinance prior to the December 6, 2018 Planning Board meeting.

ORDINANCES FOR INTRODUCTION – None.

ORDINANCES REFERRED FROM COUNCIL – None.

BOARD PLANNER'S REPORT – None.

BOARD ATTORNEY'S REPORT – None.

BOARD ENGINEER'S REPORT – None.

MISCELLANEOUS

Invoices

The Planning Board professionals' invoices from September 2018 were unanimously **approved** on a **motion** by Steven Castronova with a **second** by Warren Gross.

MINUTES

Following a correction to note that Christopher Garcia was present on September 27, 2018, the Minutes were **unanimously approved** by the Board members who were present at that meeting, on a **motion** by Steven Castronova and a **second** by Christopher Garcia.

CORRESPONDENCE RECEIVED:

The following correspondence items were reviewed and filed:

Highlands Water Protection and Planning Act Correspondence

1. None.

NJ Department of Environmental Protection Correspondence

1. Notification of proposed potable well sampling to be conducted at 21 Ringwood Lane, Block 3604; Lot 4 from HCI-Hydrotechnology, dated October 5, 2018, regarding the investigation of groundwater contamination at 2019 Greenwood Lake Tpk.
2. Response Action Outcome received from I-LSRP, dated September 14, 2018, regarding remediation for a Site Investigation at Dealer Mgmt. Services, 2925 Rt. 23 S., Block 15804; Lot 14.
3. Suspected Hazardous Substance Discharge notice from the NJDEP, dated October 11, 2018, regarding Block 16201; Lot 39, Oak Ridge Presbyterian Church, for the exceedance of nitrates in the water system.
4. Suspected Hazardous Substance Discharge notice from the NJDEP, dated October 11, 2018, regarding Block 6701; Lot 10, 1938 Union Valley Road, for a transformer spill caused by equipment failure; cleanup is complete.
5. Notification of an NJDEP Flood Hazard Area Individual Permit from Dykstra Walker Design Group, dated October 8, 2018, regarding 250 Oak Ridge Road, Block 16502; Lot 3, with respect to expansion/reconfiguration of an existing parking lot and associated site improvements.
6. Receptor Evaluation and Public Notification, dated September 17, 2018, received from SRG Site Remediation Group, regarding Newfoundland BP, 2897 Rt. 23, Block 15804; Lot 18, NJDEP Case #16-05-25-1009-26.
7. Correspondence from the NJDEP, dated October 5, 2018, regarding a Notice of Resolution for 3 Momentos Restaurant, 374 Morsetown Road, Block 4701; Lot 38.02, advising that the restoration work, including the removal of soil fill material from freshwater wetlands, transition areas and the riparian zone associated with Morsetown Brook tributary, and the implementation of a re-vegetation plan, has been completed as required.
8. Notification from the NJDEP, dated October 4, 2018, regarding T1-Sanitary Subsurface Disposal Permits for Bubbling Springs Park (PI ID #566867) and West Milford Town Hall (PI ID #168110).
9. Notification from PK Environmental, dated September 25, 2018 regarding the submission of a NJDEP Flood Hazard Area Permit application for Upper Greenwood Lake/Multi Cove Dredging Maintenance project, Block 2901; Lot 1, which includes the Boat Launch Cove, Bridge Run Cove, and Witte Cove.

Miscellaneous

1. NJ Planning Officials Dues Notice for 2019.
2. HEPSCD certification of soil erosion and sediment control plan, dated September 13, 2018 received for Melillo-Vreeland Grading & Improvements, 40 Vreeland Rd., Block 9001; Lot 21.
3. Town Of Warwick notice of special meeting on October 11, 2018 with regard to Introductory Local Law #9-2018 to amend zoning laws under Chapter 164 governing

agriculture and the agricultural protection overlay district, clarifying the requirements for commercial large scale solar energy systems, and providing for corrections to the zoning laws to address land use issues identified by the Town Board, Planning Board and the Planning, Engineering and Building departments.

4. Borough of Bloomingdale notification, dated September 19, 2018, regarding a public hearing to be scheduled on November 27, 2018 with respect to Ordinance No. 24-2018 amending Chapter 92 “Zoning”, Section 92-55 “B-1 General Business Zone” and Section 92-55.1 “B-1-A Commercial Zone” of the Code of the Borough of Bloomingdale to address parking issues.

5. Borough of Butler notification, dated September 19, 2018, regarding a public hearing to be scheduled October 16, 2018 with respect to #2018-15, an Ordinance Amending Chapter 143 – Land Use, to include new sections entitled “Temporary Exterior Storage Units in Residential Districts”, “Self-Storage Facilities”, “Electronic Signs”, and “Schedule of Permitted Uses.”

6. Notification from the Township of Hardyston regarding the adoption of Ordinance No. 2018-10 with respect to Land Use – Standards for Outdoor Lighting for Residential Properties.

ADJOURNMENT

Prior to adjourning, the Board concurred that the November 1, 2018 meeting should be cancelled. The next regular meeting is scheduled for December 6, 2018.

With no other matters to be brought before the Planning Board, Chairman Andrew Gargano **adjourned** the regular meeting of October 25, 2018 at 8:20 p.m. on a **motion** made by Councilman Lou Signorino with a **second** by Warren Gross.

Approved: December 20, 2018

Respectfully submitted by,

Tonya E. Cubby, Secretary