

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

October 27, 2011

Regular Meeting

The Regular Meeting of the Planning Board was opened at **7:33 p.m.** by Chairman Andrew Gargano with a reading of the Legal Notice, followed by the Pledge of Allegiance.

ROLL CALL

Present: Mayor Bettina Bieri, Linda Connolly, Christopher Garcia, Robert Nolan (7:37), Douglas Ott, Geoffrey Syme, Councilman Philip Weisbecker, *Vacancy*, Alternate Michael Siesta, Chairman Andrew Gargano, Board Attorney Thomas Germinario, Esq.

Absent: Alternate Steven Castronova, Board Engineer Paul Ferriero, P.E., Board Planner Charles McGroarty, P.P.

Alternate Michael Siesta was requested to sit on the Board to fill the vacant seat.

PUBLIC PORTION

Chairman Andrew Gargano opened the Public Portion of the meeting. With no one present wishing to address the Planning Board on any matter of concern, the Public Portion was **closed** on a **motion** by Councilman Philip Weisbecker and a **second** by Douglas Ott.

PRESENTATIONS – None.

APPLICATIONS

Pending Applications – There were no pending applications to come before the Board.

Extensions Of Time – There were no extensions of time applications to come before the Board.

New Applications – There were no new applications to come before the Board.

MEMORIALIZATIONS

Chairman Andrew Gargano recused himself during this portion of the meeting as he was not present when the following applications were heard by the Board. He requested Vice Chairman Geoffrey Syme to assume the Chair during the memorializations of the Board approvals.

RESOLUTION NO. 2011 - 14

JACK LEVKOVITZ (VILLAGE ON RIDGE) Section II

Amended Final Major Subdivision #0510-1744C

Extension of Time

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

Ridge Road; R-3 Zone

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

Prior to a motion being made on Resolution No. 2011-14, Mayor Bieri commented that the Township Council had recently adopted an ordinance with respect to the applicant establishing or contracting with a private water system, and she inquired whether the resolution needed to reflect that. Board Attorney Tom Germinario advised that the private water system had been one of the conditions on the applicant's prior extension of time for his amended final major subdivision and the condition of a prior resolution would carry forward.

Motion made by Councilman Philip Weisbecker with a **second** by Michael Siesta to **approve** Resolution No. 2011-14.

Roll Call: Yes: Mayor Bettina Bieri, Linda Connolly, Christopher Garcia, Douglas Ott, Councilman Weisbecker.

No: None.

RESOLUTION NO. 2011 - 15

TRIPLE T CONSTRUCTION, LLC

Preliminary Site Plan #PB-03-11-01-A

Block 6002; Lot 29

280 Marshall Hill Road; LMI Zone

Granted: Preliminary Site Plan and Conditional Use Approval to permit the outdoor storage of boats. (This application was bifurcated)

Motion made by Councilman Philip Weisbecker with a **second** by Douglas Ott to **approve** Resolution No. 2011-15.

Roll Call: Yes: Mayor Bettina Bieri, Linda Connolly, Christopher Garcia, Robert Nolan, Douglas Ott, Geoffrey Syme, Councilman Weisbecker.
No: None.

RESOLUTION NO. 2011 - 16
BRAEMAR AT WEST MILFORD, LLC
(Greene Valley Estates)
Final Subdivision #0610-1910B

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

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

Prior to entertaining a motion on Resolution No. 2011-16, Frank Regan, Counsel for Braemar at West Milford, LLC, requested to address the Board. Board Attorney Tom Germinario advised the Board and Mr. Regan that he had considered some suggestions made by Mr. Regan and had included the changes in the resolution. Mr. Regan and the applicant had reviewed the audio recording of the meeting and the draft resolution and advised that the applicant was perplexed that the Board was not permitting him to move forward with the well testing. Mr. Germinario responded that he had included the language that the applicant could continue with the well testing and he read from the resolution: "Notwithstanding the foregoing determinations, the Applicant may proceed, at its own risk, with conducting aquifer testing pursuant to Ordinance §470-15.1 based on the Aquifer Test Plan approved by Matt Mulhall."

Mr. Regan advised that the applicant (Braemar at West Milford, LLC) was prepared to continue with the well testing in compliance with the ordinance and would adhere to the time frame that he had proposed during the hearing at the prior Board meeting. He explained that the applicant would be taking on the liability and did not understand why the Board will not consider the well testing as a condition of completeness for the final major subdivision. Mr. Regan asked the Board to re-consider the applicant's need to re-apply for final subdivision approval, and further explained that the applicant did not want to complete the testing and re-submit the results and be advised that he did not meet the requirements of the local ordinance with respect to final site plan application completeness. Mr. Germinario replied that there were tolling factors, but that the Board cannot tell the applicant at this meeting that the results of the water testing would or would not be accepted, adding that it was not a foregone conclusion that the Board would not accept the application. Mr. Regan responded that the applicant did not want to undertake the well testing and the appeal with the NJDEP for the Highlands Exemption and have the Board find the application incomplete and the applicant would have to re-apply from the beginning. In that instance, Mr. Regan advised that the applicant would have no recourse but to pursue legal action. Mr. Regan further advised that Braemar at West Milford, LLC has invested over 4 million dollars in this subdivision project, including installation of the infrastructure and the construction of one house that would be part of the subdivision. Mr. Regan noted that during the past year, there had been significant communication between the professionals, the Township, and the Board, and he took exception to the assumption that there was a lack of due diligence by the applicant. He observed that there were reasons on the record why there was a lack of movement during a certain period of time with regard to this application, but that this has not been the case in the past year, adding that the applicant has spent over \$14,000 in the past year on escrow fees on this application. Mr. Regan requested that the Board allow the application to remain in place and permit the application to proceed with the requirements for completeness. He also noted that he had a check for additional escrow that he was submitting to the Secretary at this meeting.

Mr. Germinario advised that at this meeting, procedurally, the Board was memorializing the action from the last meeting. He advised Mr. Regan that if the applicant wished the Board to reconsider, that a letter would have to be submitted to the Board Secretary and request that the matter be addressed at the next meeting. Mr. Regan advised that he was verbally requesting the Board, if they were so inclined, to hold off acting on the resolution before them, and the applicant would agree to any extensions with regard to time frames in order to re-consider this matter at the next Board meeting. A letter would be submitted the following day, for the file, formally making this request. Mr. Germinario advised the Board that what Mr. Regan was proposing would not prejudice the Board's position, and it was up to the Board if a member wishes to make a motion to table this resolution until the applicant has an opportunity to ask for re-consideration.

Before the Board provided comment, Acting Chairman Syme opened the meeting to the public. The following addressed the Board regarding matters of concern:

Richard Randazzo, Wooley Road, commented that he was in attendance at the last Planning Board meeting and he believed he heard an attorney state that an applicant could not proceed with any construction or work on the site without the Highlands approval, and that the Highlands was "lost" in 2007. Mr. Randazzo stated that he has a contact with the DEP and he was advised that an appeal has not been filed, to date, by the applicant. Mr. Germinario responded that he had

contacted the Planning Board Engineer regarding this matter and was advised that the lack of a Highlands approval does not prevent the applicant from conducting well testing on his own property. Mr. Randazzo noted that they would have to proceed at their own risk and he referred to the prior testing completed and a report by the Township's hydrogeologist at the time, Dan Nachtman, that identified the issues with the wells in a report that was on file in the Planning Office, including stating that there was insufficient water to sustain the 5 wells. Mr. Germinario stated that this was not completely accurate, and that the problem with the first round of well testing was inadequate recovery under the standards of the current ordinance, but not that there was an insufficient amount of water. Mr. Randazzo believed that Mr. Nachtman's summary letter stated that the homes should not be built because there was insufficient water to sustain "health issues" by the people who would be purchasing the property. Mr. Germinario advised Mr. Randazzo that the matter before the Board at this meeting was the consideration of the memorialization of the Board's action from the prior hearing. The issue before the Board now was whether the Board desired to consider Mr. Regan's proposal to table the resolution and wait until the applicant has an opportunity to request the Board to re-consider their decision. He instructed Mr. Randazzo to focus his remarks more in that direction because this was the only matter before the Board. Mr. Randazzo noted that in the file, the applicant stated that he was proceeding at this own expense. He stated that he wanted the subdivision to go through because it would increase the value of his property, but if he could not shower or drink water due to a lack of water, that is his main concern. He stated that he wanted a healthy atmosphere, but when the 16 homes are constructed, he wondered what would happen to the existing residents and the new residents if there was insufficient water to sustain them.

Acting Chairman Syme inquired about the difference between tabling the resolution finding incompleteness and acting on it but hearing a reconsideration at another meeting, and Mr. Germinario responded that the applicant is concerned about the 45 day clock, and litigation may have to be filed based on that clock. He added that there is no liability for the Board, but that the issue for the applicant is the time he will need to prepare records before filing for litigation. Mr. Germinario further explained that the Board can stretch the M.L.U.L. in certain matters, but that the applicants only have 45 days after memorialization to file an appeal or file for litigation. Mayor Bieri requested further clarification from Mr. Germinario, and he provided an explanation to the Board. He advised the Board that they could table the resolution at this meeting, the applicant would submit a request for re-consideration at the December 1, 2011, the matter would be scheduled by the Secretary, and the Board would have the option of reconsidering the adoption of the resolution at the next meeting. Mr. Germinario noted that he was attempting to keep procedurally in order. Councilman Weisbecker inquired if the M.L.U.L. allowed the Board to delay the memorialization of the resolution to give the applicant time to submit a request for re-consideration, and Mr. Germinario confirmed that this was correct. The Board had several questions regarding Board Members' eligibility to vote on tabling the resolution and voting on re-consideration, and Mr. Germinario noted that he would have to research this, but his opinion was that the entire Board could vote on the reconsideration issue.

Following clarification by Mr. Germinario and discussion by the Board, a **motion** was made by Douglas Ott to **table** the memorialization of the Resolution No. 2011-16 until the December 1, 2011 Planning Board meeting. There was no second on the motion to table the memorialization of the Resolution No. 2011-16 until December 1, 2011.

Motion made by Robert Nolan and **seconded** by Bettina Bieri to **approve** Resolution No. 2011-16 for Braemar at West Milford, LLC, Incompleteness of Final Subdivision Application #0610-1910B.

Roll Call: **Yes:** Mayor Bettina Bieri, Robert Nolan, Christopher Garcia, Geoffrey Syme
 No: Douglas Ott.

NEW BUSINESS - There was no new business to discuss.

ORDINANCES FOR INTRODUCTION – None.

ORDINANCES REFERRED FROM COUNCIL - None.

BOARD PLANNER'S REPORT - No report available.

BOARD ATTORNEY'S REPORT – Board Attorney Tom Germinario had no report for the Board.

BOARD ENGINEER'S REPORT – No report available.

MISCELLANEOUS

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 months of August and September 2011. The

invoices were **unanimously approved** for payment on a **motion** by Councilman Philip Weisbecker with a **second** by Christopher Garcia.

2012 Meeting Dates – Following a discussion about the proposed Planning Board meeting dates for 2012, the Board requested that the July 5, 2012 meeting date be removed from the list due to the preceding July 4th holiday. The 2012 meeting dates were unanimously approved by the Board.

MINUTES

The Minutes from the August 4, 2011 Workshop Meeting of the West Milford Planning Board were **unanimously approved** by those eligible to vote on a **motion** by Councilman Philip Weisbecker and a **second** by Linda Connolly. The Minutes of the Regular Meeting of August 25, 2011 of the West Milford Planning Board were **unanimously approved** by those eligible to vote on a **motion** by Douglas Ott and a **second** by Robert Nolan.

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

HIGHLANDS WATER PROTECTION AND PLANNING ACT

1. Agency Determination - Highlands Exemption#11 notification dated October 5, 2011 from the NJ Highlands Council regarding the PSE&G Vegetation Maintenance – NERC & BPU Compliance, for the maintenance of the existing electrical Rights of Ways within existing easement throughout the Highlands Region.

NJ DEPARTMENT OF ENVIRONMENTAL PROTECTION

1. Copy of a Wetlands Mitigation Proposal received on October 17, 2011 from Princeton Hydro for applicant Evergreen Environmental regarding an application to the NJDEP for wetland and riparian zone mitigation activities that include preserving the riparian settings on Block 5708; Lot 25, for the West Branch Papakating Creek I & II and the Belcher Creek II mitigation sites. Activities include restoration, enhancement and preservation of freshwater wetlands and riparian settings as partial compensation to mitigate authorized activities associated with the “300 Line Project.”

2. Response Action Outcome Notice received on October 14, 2011 from TERMS Environmental Services for Village Holdings, LLC regarding remediation at Block 15505; Lot 2.01 & 2.02, 2887 & 2991 State Highway Route 23, including Preliminary Assessment, Site Investigation, Remedial Investigation and Remedial Action.

3. Notice received on October 11, 2011 from FERC (Federal Energy Regulatory Commission) regarding an environmental review of the TGP Northeast Upgrade Project, issuance of the Environmental Assessment on November 21, 2011 and the 90 day Federal Authorization Decision Deadline. Project consists of approximately 40 miles of 30-inch diameter natural gas pipeline in five loop segments in New Jersey and Pennsylvania, in addition to modifications at three compressor stations in Pennsylvania and one compressor station and a meter station in New Jersey. the project includes associated above ground facilities, access, roads, and pipe/contractor yards in New Jersey, Pennsylvania and New York.

4. Notice from KC Engineering and Land Surveying received on October 11, 2011 regarding an application for an NJDEP Flood Hazard Area Permit and Statewide General Permits #10A & 11 for the Replacement of Gould Road Culvert over Macopin Brook, Structure No. 1600-225.

5. Correspondence received on October 12, 2011 from the NJDEP regarding Lindy’s Lake Dam, File #22-54, requesting specific information from the Lindy’s Lake Association’s engineer with reference to the lake lowering and the safe operation level.

6. Public Notification received from BETTS Environmental Services regarding Fredericks Fuel & Heating Service Facility at 225 Oak Ridge Road, Block 16102; Lots 27, 28 in accordance with NJAC 7:26E-1.4(j)5.

7. Notice received October 7, 2011 from Marek Wenit, 40 Old Hoop Road, Block 16704; Lot 6 regarding an application to the NJDEP for a GP #25 for the proposed installation of a sub surface sanitary disposal system which will include cutting or clearing of trees.

8. Notice received on October 24, 2011 from Bruno Walzak, 551 Warwick Tpk, Block 703; Lot 2 regarding an application for a GP #25 for the proposed installation/repair of a subsurface sanitary disposal system.

CORRESPONDENCE

1. Response to the Planning Board memo received September 21, 2011 from the Health Officer, William Wallace, regarding the Noise Monitoring Procedures and the West Milford Health Department, outlining certain conditions that must be met before monitoring can be conducted per NJ State Code 7:29, and the contact information during business and off-hour monitoring .

2. Notice received October 13, 2011 from the New Jersey League of Municipalities advising of a sample resolution in opposition to proposed legislation S-2887/ A-3992 establishing a new category of farmland-based wind energy generation projects on preserved farms that would require no regulatory review other than site plan approval.

3. Notices received in September 2011 regarding the **certification** of the soil erosion and sediment control plans from the Hudson Essex Passaic Soil Conservation District for: Brookside Development, 121 Union Valley Road, Block 14601; Lots 5.01, 5.02, 5.03, 5.04; and PSEG Roadway Access Grading at 246 Morsetown Road, Block 4701; Lot 22 & 43, with plans certified for 3.5 years. **Recertification** of a soil erosion and sediment control plan for Fox Properties, Warwick k Tpk. & Larchmont Drive, Block 410; Lots 1.01, 1.04, 2.
4. Notice dated October 4, 2011 from Passaic County Department of Planning regarding a site plan submitted for Q & S Deli, 1952 Union Valley Road LLC, Block 3601; Lots 1 & 3, advising that the deed, title policy, NJ Form GIT3 and Affidavit of Consideration indicating that no transfer tax is due since the land is being dedicated to a government entity, and a right of way access permit is needed prior to receiving unconditional approval of the site plans that include a road widening for a 13.50 foot strip of land along Union Valley Road frontage.
5. Information received from the NJ DCA regarding the New Jersey Home Energy Programs and the Passaic County Division of Weatherization and Home Energy.
6. Copy of the October 2011, Volume 16, Issue 5 of the Pequannock Post.

ADJOURNMENT

Prior to adjourning, Chairman Gargano advised that the Planning Board meeting scheduled for November 4, 2011 would be cancelled.

With no further business to come before the Planning Board, the Regular Meeting of October 27, 2011 was **adjourned** at 8:15 p.m. by Chairman Gargano on a **motion** by Councilman Philip Weisbecker and a **second** by Robert Nolan.

Approved: December 15, 2011

Respectfully submitted by,

Tonya E. Cubby, Secretary