

**TOWNSHIP OF WEST MILFORD  
PLANNING BOARD**

**MINUTES**

**November 4, 2010**

**Regular Meeting**

The Regular Meeting of the Planning Board was opened at 7:34pm by Chairman Andrew Gargano with a reading of the Legal Notice, followed by the Pledge of Allegiance.

**ROLL CALL**

**Present:** Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Christopher Garcia, Councilman Philip Weisbecker, *Vacancy*, Michael Siesta, Thomas Harraka, Chairman Andrew Gargano, Board Attorney Thomas Germinario, Esq., Board Engineer John Hansen.

**Absent:** Geoffrey Syme, Douglas Ott, Board Planner Chuck McGroarty.

Chairman Gargano requested Planning Board Alternates Michael Siesta and Thomas Harraka to sit on the Board for the vacant position and one of the absent members.

**PUBLIC PORTION**

Chairman Gargano opened the Public Portion of the meeting. No one present wished to address the Planning Board, and the Public Portion was **closed** on a **motion** by Steven Castronova with a **second** by Councilman Weisbecker.

**MEMORIALIZATIONS**

**RESOLUTION 2010-17**

**WOJCEICH CZYKIER**

**Major Soil Removal/Fill #PB-07-10-08**

Block 9406; Lot 45

27 Weedon Drive; R-3 Zone

**Granted:** Major Soil Movement Permit, with conditions for re-grading subject property.

**Motion** by Steven Castronova with a **second** by Councilman Weisbecker to **approve** Resolution No. 2010-17 granting a Major Soil Removal/Fill Permit for Wojceich Czykier.

**Eligible to Vote Roll Call:**

**Yes:** Mayor Bettina Bieri, Steven Castronova, Christopher Garcia, Michael Siesta, Councilman Philip Weisbecker, Chairman Andrew Gargano.

**No:** None.

**RESOLUTION 2010-18**

**Resolution of the Township of West Milford Planning Board Adopting the 2010 Re-Examination Report of the Master Plan and Development Regulations for the Township of West Milford, County of Passaic, State of New Jersey, As Amended**

**Motion** by Councilman Weisbecker with a **second** by Steven Castronova to **approve** Resolution No. 2010-18 adopting the 2010 Re-examination Report of the Master Plan and Development Regulations for the township of West Milford.

**Eligible to Vote Roll Call:**

**Yes:** Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Christopher Garcia, Michael Siesta, Thomas Harraka, Councilman Philip Weisbecker, Chairman Andrew Gargano.

**No:** None.

**RESOLUTION 2010-19**

**Resolution of the Township of West Milford Planning Board Approving the Amendment to the Master Plan - Land Use Plan Element for the Township of West Milford, County of Passaic, State of New Jersey, As Amended.**

**Motion** by Councilman Weisbecker with a **second** by Linda Connolly to **approve** Resolution No. 2010-19 approving an amendment to the Master Plan – Land Use Plan Element for the Township of West Milford.

**Eligible to Vote Roll Call:**

**Yes:** Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Christopher Garcia, Michael Siesta, Thomas Harraka, Councilman Philip Weisbecker, Chairman Andrew Gargano.

**No:** None.

**APPLICATIONS**

**Appointment of Acting Chairman**

Prior to the following matter regarding Jack Levkovitz and an Extension of Time request for the Amended Final Subdivision Approval for Village on Ridge – Section II, Chairman Andrew Gargano recused himself from this application and retired from the meeting.

**Motion** by Michael Siesta with a **second** by Mayor Bettina Bieri to appoint Steven Castronova to Chair the remainder of the meeting.

**Roll Call:**

**Yes:** Mayor Bettina Bieri, Steven Castronova, Linda Connolly, Christopher Garcia, Thomas Harraka, Michael Siesta, Councilman Philip Weisbecker.

**No:** None.

**EXTENSION OF TIME**

**JACK LEVKOVITZ (VILLAGE ON RIDGE - SECTION II)**

**Amended Final Subdivision #0510-1744C**

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

Ridge Road; R-3 Zone

**Seeking:** Time extension for filing final major subdivision deeds, and amendment to Resolution No. 2005-42 to modify certain conditions regarding the filing of the plat, and the contemplation of a private water purveyor to operate a water distribution system, in addition to resolution of prior litigation matters.

Rob Simon, Esq., attorney for the applicant, was present to address the Board. Also present was Kevin Boswell, PE, testifying as an engineering expert, as well as Jack Levkovitz, the applicant. Mr. Simon addressed the Board regarding portions of the prior conditions of approval for the Amended Final Subdivision for Village on Ridge – Section II, noting that in a letter dated October 22, 2010, the Mr. Levkovitz had requested an extension of the final major subdivision approval to November 4, 2011, pursuant to N.J.S.A. 40:55D-52(a), and has further requested amendments to conditions of the 2005 Resolution (Resolution 2005-42) to provide for the operation of the approved water supply system for the subdivision by a private water purveyor instead of by the West Milford Municipal Utilities Authority (the “MUA”), as is currently provided for by the 2005 Resolution.

The conditions that the applicant requested amendment of were the following:

- (3) Prior to the signing of the final plat and release of same for filing, the Applicant shall:
  - C. have posted with the Municipal Utilities Authority a performance bond for remaining Water Supply and Wastewater Collection Facilities in the amount of \$520,000.00;
  - E. have satisfied the recommended conditions set forth in the Municipal Utilities Authority’s letter dated January 6, 2005, as follows:
    - 1. the West Milford Township Municipal Utilities Authority must receive a Water Allocation Permit for the three (3) proposed Water Supply Wells in the Authority’s name for the proposed Public Community Water Supply System;
    - 2. the West Milford Township Municipal Utilities Authority must receive a Permit to Construct and Operate a Public Community Water Supply System in the Authority’s name for the proposed Community Water Supply System.

The following exhibits were marked as part of the hearing record:

A-1 Final Subdivision Plat for Section II, dated 07/04

A-2 Letter of Matthew J. Mulhall, PE to Dorrie Fox, West Milford Land Use Administrator, dated 06/07/10, with Attachment A, NJDEP letter of 04/12/10

A-3 Correspondence consisting of: 3 letters from NJDEP Division of Water Supply to Diane Paretti, Executive Director of West Milford MUA, dated 02/05/09, 04/21/09 and 09/24/09; 2 letters from NJDEP Water Supply to Kelly Love, Director of Staff Operations of West Milford MUA, dated 02/05/10 and 04/12/10; letter of Kevin Boswell to Kelly Love, Director of Staff Operations of West Milford MUA, dated 01/12/10; and letter of Anthony Reitano to Steven Dudley of NJDEP dated 02/22/10.

Following a review of the documents and testimony from Mr. Simon, Mr. Boswell, and Mr. Levkovitz, the meeting was opened to the public for comment by Acting Chair Steven Castronova. The following addressed the Board regarding this matter:

Joe Chirichella, 30 Heritage Drive, commented that he had received notice regarding privatizing the water system and inquired what it meant to the residents in the existing 10 homes from Phase I. He advised the Board that the existing homes have very poor water pressure, the pumps continually burn out, and they are serviced by the M.U.A. Concern was expressed that a new water purveyor would not result in more water or better water pressure. Mr. Boswell, the applicant’s engineer, reviewed the current and proposed system with the homeowner.

Christine Chovaro, 23 Heritage Drive, addressed the Board regarding the pumps that are used by homeowners for better water pressure and was advised by the former property owner that the applicant was supposed to provide new pumps. She also noted that the past summer she was without water and expressed the hardship on the residents of the development and the attempts by residents to rectify the situation with the M.U.A.. Ms. Chovaro inquired what the result would be if the project is not completed, and Mr. Germinario advised that performance bonds will be in place.

Wayne and Sara Warren, 218 Ridge Road, expressed concern about any affects on their well during the testing phases for the new wells.

Shabbar Alidina, 2 Iron Hill Pass, inquired whether the proposed water company would be more expensive than the current M.U.A. system and was concerned about being without a functioning water system when the new system starts operating.

Rebecca Chirichella, 30 Heritage Drive, inquired what recourse the homeowners would have, and if a new system is connected, would an option be to return to the M.U.A. if not satisfied with the new system. She expressed that there were numerous problems associated with the current system.

Frank Polczer, 20 Heritage Drive, advised that he has a pump that is more than adequate and would not want to have less pressure than what he currently has.

Brian Sledge, 15 Heritage Drive, inquired about the process in getting a new water company approved by the Township, and Mr., Germinario advised that notice will be sent and residents will have an opportunity to be part of the hearings.

With no one else present wishing to address the Board on this matter, the public portion was **closed** on a **motion** by Michael Siesta and a **second** by Councilman Weisbecker.

The Planning Board made the following findings and conclusions, as represented in the memorializing resolution:

1. In order to qualify for an extension of final major subdivision approval pursuant to N.J.S.A. 40:55D-52(a), a developer must have duly recorded the final plat. However, the 2005 Resolution provides that the Applicant may not pursue the signing or recording of the final plat until the Applicant has satisfied the recommended conditions set forth in the Municipal Utilities Authority's letter dated January 6, 2005.
2. An extension of the final major subdivision approval for the Project under N.J.S.A. 40:55D-52(a) cannot be granted unless the Board also agrees to sign and release the final plat for filing. Since the filing of a final plat for the Project would create 50 residential building lots, the Board must require adequate assurances that a water supply and treatment system can be constructed and operated to service the Project.
3. Applicant proposes to make no changes in the approved physical infrastructure of the Project's water supply and treatment system, but proposes only to change the entity responsible for operating the system from the MUA to a private water purveyor.
4. In order to ensure an adequate and reliable water and treatment system for the Project, prior to the filing of the final plat, Applicant must: (a) comply with the requirements of the Township's Water Supply Ordinance, (b) enter into a contract with a licensed private water purveyor for the operation and maintenance of the approved water supply and treatment system for the Project (the "Water Purveyor Contract"), (c) obtain the approval of the Township Council for the operation of the Project's water supply and treatment system by a private water purveyor, (d) obtain the approval of the Township Council for the Water Purveyor Contract, and (e) post a performance bond for the completion of the Project's water supply and treatment facilities in an amount to be determined by the Township Engineer.
5. Upon fulfillment of the items set forth in Paragraph 4 above, as conditions precedent, the Board approves the signing and release for filing of the final plat, subject to the condition subsequent that Applicant and/or the designated private water purveyor shall have obtained all requisite governmental permits for the operation of the Project's water supply and treatment system on or before December 31, 2011 (which date may be extended by the Board for good cause), failing which, the final plat shall be rescinded by Applicant.
6. Subject to the fulfillment of the conditions precedent set forth in Paragraph 4 above, the Board can approve three one-year extensions of the final major subdivision approval under N.J.S.A. 40:55D-52(a), from the current expiration date of December 6, 2008, to December 6, 2011, provided that the extension will not become effective until all conditions precedent are fulfilled, and further provided that if all conditions precedent set forth in Paragraph 4 above are not fulfilled by May 4, 2011 (which date may be extended by the Board for good cause), the extension will become null and void.
7. Pursuant to Condition 9 of the 2005 Resolution, Applicant is required to make a contribution to the Township's affordable housing obligation in an amount to be agreed to by the Board. Based on proposed legislation currently pending in the State Legislature, the Board finds that a reasonable affordable

housing obligation set aside associated with the Project comprises 15% of the residential units, or credit for 8 units of low and moderate-income housing. The manner in which this obligation is satisfied by the Applicant (i.e., on-site construction, off-site construction or rehabilitation, or monetary contribution in lieu of construction) shall be identified by the Applicant as part of the Township's review of the Project's water system pursuant to Paragraph 4 above.

Additionally, Resolution No. 2005-42 was amended as follows:

Condition 3C is amended to read:

- C. have posted the following performance bonds:
  - 1. a performance bond for the Wastewater Collection Facilities to the West Milford Municipal Utilities Authority (MUA) in an amount to be determined by the MUA;
  - 2. a performance bond for the remaining Water Supply Facilities to the Township of West Milford in an amount to be determined by the Township Engineer.

Condition 3E is amended to read:

- E. have satisfied the following conditions:
  - 1. compliance with all requirements of Township Ordinance Section 17-4.3.1, entitled "Water Supply and Water Quality Requirements," as determined by the Board's hydrogeological consultant, sufficient to demonstrate adequacy of water supply to serve 60 homes in Sections I and II of the development;
  - 2. provide an executed contract with a licensed private water purveyor for the operation and maintenance of the water supply and treatment system as approved in the 2005 Resolution;
  - 3. approval by the Township Council for the operation of the approved water supply and treatment system by a private water purveyor;
  - 4. approval by the Township Council of the contract with the licensed private water purveyor;
  - 5. written agreement with the Township Council for Applicant to provide affordable housing set aside in the form of a credit for eight (8) low and moderate income units, or the monetary equivalent thereof.

A new Condition 11 is added, to read as follows:

(11) No building permits shall be issued, and no subdivision lots shall be sold until Applicant has demonstrated to the satisfaction of the Township Engineer that it has secured all governmental permits and approvals required for the operation of the Project's water supply and treatment system by a private water purveyor, provided that if all such approvals are not obtained by December 31, 2011, (which date may be extended by the Board for good cause), Applicant shall rescind the filing of the final plat in a manner acceptable to the Board's Attorney.

A new Condition 12 is added, to read as follows:

(12) This approval shall not in any way alter the extent of Applicant's legal obligations with respect to water supply for Section I of the development, provided however, that Applicant will, if feasible, provide water service to the 10 existing homes in Section I as part of the development of Section II and will construct the water system for the Project with sufficient capacity to do so. As part of the development of Section II, Applicant will seek the approval of the MUA to provide water service to the homes in Section I and, if feasible, will be prepared to connect the homes in Section I to the Project's water supply system prior to construction of homes in Section II of the development.

The Board also granted an extension of the final major subdivision approval until December 6, 2011, pursuant to N.J.S.A. 40:55D-52(a), subject to the following conditions:

The Amended Resolution Conditions 3C and 3E are conditions of this extension, so that the extension should not become effective until all conditions are satisfied and provided that if all conditions are not satisfied by August 4, 2011 which may be extended by the Board, this extension shall become null and void. Should the filing of the final plat be rescinded pursuant to amended Resolution Condition 11, then this extension will become null and void.

**Motion** by Councilman Weisbecker with a **second** by Thomas Harraka to **approve** the Amendment to Resolution 2005-42 with the conditions noted by Board Attorney Thomas Germinario for Jack Levkovitz – Village on Ridge Section II, and the Time Extension for a period of one year, or until December 6, 2011 providing that the conditions have been met by August 4, 2011, unless another extension is granted by the Board.

**Eligible to Vote Roll Call:**

**Yes:** Steven Castronova, Thomas Harraka, Michael Siesta, Councilman Philip Weisbecker.

**No:** Mayor Bettina Bieri, Linda Connolly, Christopher Garcia,

**PENDING APPLICATIONS** - None.

**NEW BUSINESS** - None.

**ORDINANCES FOR INTRODUCTION** - None.

**ORDINANCES REFERRED FROM COUNCIL** - None.

**PLANNER'S REPORT** - None.

**BOARD ATTORNEY'S REPORT** - None.

**BOARD ENGINEER'S REPORT** – John Hansen reported that the Highlands Application had been submitted for the proposed new Township Library.

**MISCELLANEOUS** - None.

### **MINUTES**

**Motion** by Michael Siesta with a **second** by Councilman Philip Weisbecker to **approve** the Planning Board Regular Meeting Minutes of September 23, 2010 with a correction noted to read Pinecrest, not High Crest. The Minutes were **approved** by unanimous consent.

**MISCELLANEOUS** - None.

***The following were noted by the Planning Board and filed:***

### **COMMUNICATIONS**

1. Copy of the executed Professional Service Contract per Resolution No. 2009-328 with White Environmental Services regarding the Trails Master Plan.
2. Public Notice from Envirotech Consultants LLC, regarding Pazak Service Station aka Sunoco Service Station, 3021 Rt. 23, Block 16001; Lot 9 regarding environmental investigation/clean up of the site.

### **HIGHLANDS WATER PROTECTION & PLANNING ACT / NJ DEP CORRESPONDENCE**

1. Request for additional information from the NJ DEP, dated October 15, 2010, from Ray Barnitt, R-D Trucking, 1874 Route 23, regarding a Residual General Permit Authorization New Cat: ZG-Residuals Transfer Facilities.
2. Notice from the NJ DEP Bureau of Coastal and Land Use Compliance and Enforcement regarding Block 6701; Lot 13, Peter Esposito, advising that no additional enforcement action will be taken with respect to filling and re-grading of a topographical depression at the site, and advising that compliance with HEPSCD is required. Any further activity would require a Highlands Determination and a NJDEP permit from the Division of Land Use Regulation.
3. Receipt of NJDEP Child Care Facility Approval Letter dated October 19, 2010 from the NJ DEP regarding Paradise Pre-School, 104 Paradise Road, Oak Ridge, block 15701; Lot 43.
4. Notice of Deficiency dated 09-27-10 received from the NJ DEP regarding the Lukoil site located at 1367 Union Valley Road, citing the following: Failure: ...of the owner to implement the approved Remedial Action Work Plan within the set time frames, ...to submit progress reports, ...to comply with monitoring wells and piezometer requirements, ...to report monitoring well sample information, ...to submit requested stratigraphic cross sections, ...to include required information in the RAPR.
5. Copy of correspondence from Cefes Financial, Inc. to NJ DEP regarding additional information required for a Highlands Applicability Determination for a single family home at Block 16504; Lot 4 on Apple Tree Lane.
6. Highlands Determination – Not a Major Highlands Development – Water Quality Management Plan – Consistent – received for Michael and Sherri Zupp, 9 Martha Street, Block 12110; Lot 6, regarding the subdivision of existing block 12110; Lot 6 (8.3 acres) into proposed Lots 6.01 and 6.02, and the construction of a 3 bedroom single family dwelling on Lot 6.02 and improvements to existing dwelling on Lot 6.01.

### **ADJOURNMENT**

With no further business to come before the Board, Chairman Andrew Gargano **adjourned** the October 28, 2010 Regular Meeting of the West Milford Planning Board at **10:00 pm** on a **motion** by Councilman Philip Weisbecker and a **second** by Michael Siesta.

Approved: February 24, 2011

Respectfully submitted by,

Tonya E. Cubby, Secretary