

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

December 5, 2013

Regular Meeting

In the absence of Chairman Geoffrey Syme, the December 5, 2013 Regular Meeting of the West Milford Planning Board was opened at **7:34 p.m.** by Acting Chairman Christopher Garcia, with a reading of the Legal Notice, followed by the Pledge of Allegiance and Roll Call.

ROLL CALL

Present: Mayor Bettina Bieri, Christopher Garcia, Andrew Gargano, Robert Nolan, Councilman Luciano Signorino (7:43), Glenn Wenzel, Alternates Steven Castronova, Michael Siesta, Board Attorney Thomas Germinario, Board Engineer John Hansen.

Absent: Linda Connolly, Douglas Ott, Chairman Geoffrey Syme, Board Planner Charles McGroarty.

Acting Chairman Garcia requested Michael Siesta and Steven Castronova to sit in for the absent Board members and advised that a quorum was present for this meeting.

PUBLIC PORTION

Acting Chairman Garcia opened the Public Portion of the meeting. The following addressed the Board:

Richard Randazzo, Wooley Road, addressed the Planning Board regarding the aquifer-testing ordinance and residential wells in the vicinity of the Braemar at West Milford subdivision. Mr. Randazzo inquired about the participants for the off-site well monitoring, and indicated that he desired to have his well to be monitored during the testing phase. He requested that the Board take into consideration the well testing that was conducted by the Applicant in 2004 and 2005 when evaluating the current well testing results, and noted that he intended to appear before the Board at their meetings to make sure that the matter “doesn’t slip through the cracks.”

There being no one else wishing to address the Board, the Public Portion was **closed** on a **motion** by Robert Nolan and a **second** by Steven Castronova.

PRESENTATIONS - None.

NEW APPLICATIONS

JOHN AIELLO

Major Soil Removal/Fill Permit #PB-02-13-01

Block 4402; Lot 1

828 East Shore Road; R-4 Zone

Seeking: Major Soil Removal/Fill Permit for the purpose of re-creating wetlands that previously existed on the site and to comply with a NJDEP settlement agreement.

Prior to commencement of testimony, Board member Glenn Wenzel recused himself from this matter and left the dais. John Aiello, Applicant, currently residing in West Palm Beach, Florida, was sworn in by Board Attorney Thomas Germinario. Mr. Aiello provided an overview of the application, testifying that he had received an approved permit for tree farming at his property at 828 East Shore Road, Hewitt, NJ, and had also received a permit from the Township to fill in certain locations of his property. He subsequently added manure to the soil that he had imported for fill, and this flowed into an adjacent streambed during storm water runoff. He testified that a complaint was issued by the NJDEP due to the fact that their maps indicated that the location filled in with soil and manure included wetlands. Mr. Aiello asserted that the actual wetlands were located further north of the filled location, but it was not noted on the NJDEP maps. He negotiated with the NJDEP an agreement that included restoration of the wetlands. He further testified that usually when wetlands are filled in, fines are imposed, but he noted that no fines were imposed on him by the NJDEP. Mr. Aiello stated to the Board that he met with the Township Zoning Officer, the Hudson Essex Passaic Soil Conservation District, and the NJDEP, and they did not find fault with what he had done, but, nevertheless, an agreement was reached with the NJDEP to restore wetlands in the area that had been filled. In accordance with the agreement, Mr. Aiello is required to remove the soil that was imported to his property, as well as plant trees and grass by May 15, 2014. Mr. Aiello added that he was remiss in getting the Major Soil Removal/Fill Permit application submitted to the Township Planning Board, and time has become a major factor with the deadline looming. Mr. Germinario inquired where the soil is going that he used to fill in the wetlands, and Mr. Aiello indicated on a map where the new soil is proposed to be re-located on site, including some that will be placed around an existing residence. As for the source of the soil, Mr. Aiello testified that the soil came from a construction project on Greenwood Lake Turnpike completed by Passaic County. Mayor Bettina Bieri inquired how Mr. Aiello acquired access to the soil, and Mr. Aiello responded that Passaic County was “happy to get rid of it.” Mr. Germinario inquired what would prevent Mr. Aiello from moving the soil to another location on his property, and Mr. Aiello replied that he could move the soil further but that would be too costly, adding that the plan that was being submitted for the major soil permit application was an

improvement to his property, since the soil would allow grass and trees to grow in an area that is mainly composed of rock. Mr. Aiello testified that he would be removing three trees in order to accommodate the soil. Councilman Lou Signorino commented that he had been to the site and could attest that the property contained numerous rock outcroppings and soil would improve the site. John Hansen, Planning Board Engineer, inquired whether there is an adjoining property downstream of Mr. Aiello's property, and Mr. Aiello confirmed that there was, stating that there is sufficient land between his property and the neighbors, and that even if there were a significant rain event, it would not affect the neighboring properties. Mr. Germinario advised that an expert must testify to this.

Paul Lapatka, P.E. of Eid and Lapatka, was qualified and sworn in as expert witness for this application. Mr. Lapatka testified that the amount of soil to be moved was 4620 cubic yards; the Board members estimated it to be approximately 243 truckloads. He noted that the soil would be from 6 to 8 feet in height, and he provided an explanation about the soil movement, stating that there was a flat area at the top of the property where dense vegetation would be planted to help reduce the rate of run off. Mr. Lapatka also noted that the time of concentration was increased to 15 minutes, not 20 minutes as noted in the Board Engineer's report, and he provided an explanation to the Board about the relationship between the time of concentration and the flow, as well as the correlation with the hydrology of the rate and volume. Mr. Hansen inquired what Mr. Lapatka used for calculations, and Mr. Lapatka responded that Area 1 included the existing house, open space, woods with ground cover, and Area 2 included the wetlands area, open space and woods with cover, noting that the larger area was used for the calculations. Mr. Lapatka stated that he was conservative with the calculations. Mr. Hansen inquired about the area that will be filled, expressing his concern about negative impacts with sites that are filled upstream. He referred to a similar major soil movement permit application that has been before the Board for the past year and a half, and requested that Mr. Lapatka stand by his testimony and certify that there would be no negative impacts from storm water run off. Mr. Lapatka observed that the subject location is high, with rocky terrain, so the current run off was high, but they were proposing to install jute matting over the slope and plant it for stability. Board member Andrew Gargano inquired about the slope increments, and Mr. Hansen observed that a 2 to 1 ratio was steeper than what could be easily mowed. He inquired of the Applicant's engineer if there was a planting scheme, to which Mr. Lapatka responded that the planting scheme included various vegetation, brush and grasses. Mr. Aiello commented that the area is currently very steep, but they proposed leveling the top area by moving soil away from the site. Mr. Lapatka noted that when the site was surveyed, they tried to minimize the impact to the trees and to stay within the limits of the area. He stated that they wanted to do a 3 to 1 slope, and could excavate the rock if needed. Mr. Gargano commented that a valley is being created down the road from the site, and Mr. Aiello interjected that rocks exist on the site and the run off currently flows over the rocks and down the road, but their plans propose to reduce the flow. Mr. Gargano and Mayor Bieri both commented on other major soil applications that were before the Board as a result of neighboring property owners being impacted by storm water and erosion issues after major soil movements occurred, and maintained their attempts to prevent a similar situation. Mr. Lapatka advised the Board that the slope would have to be recalculated, but it was generally 10% to 15%, with some areas over 20%, with the grade comparable to a steep driveway. Board member Michael Siesta suggested that a retaining wall be installed. Mr. Gargano inquired about the intent to truck the soil to another location on the site, and Mr. Lapatka responded that the soil would be moved approximately 240 feet. Mayor Bieri noted that the soil would then be closer to the neighboring property owner. Mr. Aiello stressed that the water would not flow on to the neighboring properties.

Mr. Lapatka testified that his partner, Stephen Eid, P.E., P.L.S., prepared the topography, and Mr. Eid was qualified and sworn in to testify as an expert witness in this matter. Mr. Eid testified that the wetlands were in the direction of the New York State border, and the general topography went down and northeast to a stream that leads into Greenwood Lake. He further advised that there would be no impact to the neighboring property owners since the area where the water would drain is a very wooded site. Mr. Germinario observed that there would be an increased flow initially, and Mr. Eid asserted that in his professional opinion, there would not be a large impact. He did note, however, that he did not survey beyond the end of the property and there was a lot of variation in topography. He further noted that the conditions that currently exist would not change dramatically as long as the site was stabilized and planted quickly. Mr. Lapatka interjected that they were increasing the slope to create a plateau in order to lower the flow rate. He further explained to the Board about the pitch and its affect on slowing the rate of flow, noting that stabilizing the slope will result in a minor change in the hydrology and will be similar to the current conditions. Mr. Aiello addressed the Board and stated that the Board members could be assured that if there were a possibility of water affecting his neighbor's property, he would fix the problem. He further testified that he was a victim in this matter, and had a permit from the "County" to use the soil for fill. The Major Soil Removal/Fill Permit plan was prepared in his attempt to get this matter rectified.

With regard to a retaining wall, Mr. Lapatka noted that it was a possibility, although he preferred to expand out to create a 3 to 1 slope, and Mr. Eid suggested tree wells rather than install a rock retaining wall. It was noted that there was a certain amount of soil that had to be relocated to a small area. Mayor Bieri suggested that a consideration be made to move the soil off site. Mr. Hansen observed that the Applicant's property was large and inquired whether there was another location to relocate the soil so that the storm water would flow into the County drainage. Mr. Aiello stated that the NJDEP had accepted the plan that was before them, and would not accept plans to relocate the soil to another location on this property since other areas were considered wetlands or were too wooded, even though he would have preferred to move the soil to several locations to create a better lawn area. Mr. Hansen cautioned the Board regarding the testimony from the engineers with respect to run off,

and advised that calculations were one aspect, but with time of concentration and path of flows, a slight change downstream or upstream could result in a negative impact. He suggested that the Board require the Applicant's engineers to revisit their calculations and confirm that there would be no damage downstream. Mr. Germinario advised the Applicant and his professionals to review their plans and consult the Board's Engineer, John Hansen, and be prepared to return to the Board the following month in January.

Mayor Bieri inquired about the number of trees being removed, what was being used to stabilize the slope, and expressed concern that there was no guarantee that damage would not result from this plan. When questioned by Mr. Siesta the length of time for the jute matting to break down and take effect, Mr. Lapatka replied that it would take approximately 6 months, but a large rainfall before that time could cause it to fail. Mayor Bieri observed that if a significant rain event occurred, 230+ truck loads of fill could be washed out before it is stabilized, and would end up in Greenwood Lake, adding that with the May 15, 2014 deadline, it was not a good time to create stable vegetation to prevent erosion. Mr. Eid reviewed the current site conditions and noted that making the area flat at the site that will be filled will create a ponding area and will discourage run off. Mr. Germinario advised the Board that the plan proposed by the Applicant had to be reviewed carefully, revised, and assessed by the Board Engineer. Mr. Aiello appealed to the Board, stating that another proposal would not be necessary, but that they would lessen the slope and truck some of the soil off the site. Mr. Lapatka observed that 50 truckloads moved off site would equal to about 20% of the soil to be moved, adding that he would work with the Board Engineer to develop a stabilization plan. Mr. Hansen advised that the Applicant's engineers would need additional topography completed, and instructed Mr. Eid to extend the survey to the road and to use County aerials, as well as other tools, to compile the data. Mr. Hansen advised that the revised plans and calculations were necessary due to 1.) an increase in volume and rate of run off would impact the neighbors, and 2.) if the site were not properly stabilized, the sediment would flow on to the neighboring properties and into Greenwood Lake. Mayor Bieri clarified what the Board was requiring: extend the topography to the road, reduce the fill on the site, and extend the fill to reduce the slope. Mr. Hansen inquired if there was another location to take the fill to, and Mr. Aiello suggested that it could be used to fill in a swale in his front yard. When Mr. Aiello expressed concern that a revised plan would not be approved by the Board, Mr. Germinario advised him that if he satisfies the Board Engineer with a revised plan, and it is 99% accurate, the Board will not have a problem when he reruns for approval in January. When asked for more specifics on the revised plan, Mr. Hansen commented that he could not design the plan for the Applicant, but much of the information required was discussed at this meeting, and he would be available to speak to Mr. Aiello's engineers. Board member Steven Castronova commented about the clay content of the soil and whether it would have an impact since it was not permeable, and Mr. Hansen noted that any vegetation proposed would not change the soil content. Mr. Aiello noted that much of the soil on his property was clay and rock, with some gravel areas.

Mayor Bieri observed that there were other items on the Board Engineer's and Health Dept. memos that should be addressed. Mr. Lapatka acknowledged these memos, and advised the Board that he would contact the Board Engineer and develop a solution to the plan immediately. Acting Chairman Chris Garcia inquired when the Applicant intended to start the project, and Mr. Aiello responded that he had a deadline to have all the trees planted (over 300) and grass planted, adding that they had purchased mats so they could work in the rough weather. Mr. Germinario noted that Mr. Ferriero had requested a proposed construction schedule and Mr. Aiello should be prepared to discuss this when he returns to the Board in January. With regard to trucking the soil off site, Mayor Bieri observed that it would be the responsibility of the trucking company to find a site for the soil they did not need, but Mr. Aiello replied that he had made attempts, but the cost to move the soil would be too expensive, and he was willing to be flexible if the Board approved the soil to be moved to another location on site. Mayor Bieri inquired why it took the applicant a year after his settlement agreement with the NJDEP to submit his application to the Board, and Mr. Aiello responded that some of the delays were on his part because he needed to get the soil erosion plan certified with the HEPSCD and have the plans prepared by his engineers, but he acknowledged that some of the "tie-ups" were his responsibility. He stated that if the Board approves his plan, no further delays would occur since the NJDEP would not be amenable to an extension. Mr. Aiello then inquired whether he needed to be present at the January hearing, and Mr. Germinario could not confirm that his presence would or would not be required, advising that the risk would be Mr. Aiello's.

With no further testimony to be presented to the Board at this time, and pending revision of the Major Soil Removal/Fill Permit plans for John Aiello, PB-02-13-01, Block 4402; Lot 1, 828 East Shore Road, Acting Chairman Garcia advised that this matter would be **carried** to the January 9, 2014 Planning Board Regular Meeting. He further advised that if the plan revisions were not completed and submitted in sufficient time, the matter would automatically be carried to the January 23, 2014 Planning Board Regular Meeting.

MEMORIALIZATIONS

RESOLUTION NO. 2013-17

**NY SMSA LP d/b/a VERIZON WIRELESS (CANISTEAR RD) - West Milford 12
Preliminary & Final Site Plan #0720-0285AB**

Bulk Variance #0730-0771

Block 16901; Lot 2

3520 Route 23; R-4 Zone

Granted: (3) One Year Extensions of Time under 40:55D-52 a. and (1) One Year Extension of Time under 40:55D-52 d., or until January 24, 2014, for Preliminary and Final Site Plan approval with Bulk

Variance for the co-location of twelve antennas on an existing monopole with slight modification to the installation of a 11.5' x 20' equipment shelter.

Motion by Andrew Gargano with a **second** by Councilman Lou Signorino to **approve** Resolution No. 2013-17 providing (3) One Year Extensions of Time under 40:55D-52 a. and (1) One Year Extension of Time under 40:55D-52 d., or until January 24, 2014, for Preliminary and Final Site Plan approval with Bulk Variance for NY SMSA LP d/b/a Verizon Wireless (Canistear Rd)

Roll Call:

Yes: Mayor Bettina Bieri, Andrew Gargano, Robert Nolan, Michael Siesta, Councilman Luciano Signorino, Glenn Wenzel, Acting Chairman Christopher Garcia.

No: None.

Motion approved.

RESOLUTION NO. 2013-18

SUN YOUNG JOO

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

Block 10402; Lot 12

55 Green Terrace Way; R-4 Zone

Granted: 6-Month Extension of Time, or until April 15, 2014, for completion of drainage improvements related to the Major Soil Removal/Fill Permit #PB-05-12-05-A for storm water management at subject site.

Motion by Robert Nolan with a **second** by Glenn Wenzel to **approve** Resolution No. 2013-18 providing a 6-month extension for the Sun Young Joo Major Soil Removal/Fill Permit #PB-05-12-05-A.

Roll Call:

Yes: Mayor Bettina Bieri, Andrew Gargano, Robert Nolan, Michael Siesta, Councilman Luciano Signorino, Glenn Wenzel, Acting Chairman Christopher Garcia.

No: None.

Motion approved.

NEW BUSINESS -

Board Professional 2014 Contracts - The Planning Board requested the Secretary to prepare the resolutions and contracts for the current Planning Board professionals for the January 9, 2014 Re-Organization Meeting. The Secretary noted that Board Attorney Tom Germinario advised that his hourly rate will be raised by \$10.00 per hour for 2014, but this is the first increase since 2008. Board Member Michael Siesta inquired if the Board advertises for other professionals, adding that he had no one in particular in mind, and the Board Secretary advised that the Board generally does not send out RFP's, but no one was precluded from submitting a letter of interest.

Delinquent Escrow Fees - The Board Secretary reported that two Applicants had not submitted additional escrow to pay overdue invoices from the Board professionals in spite of numerous requests (Card-\$48.38, Triple T Construction-\$400.87). After this matter was reviewed by the Construction Official, Township Administrator, and Township Treasurer, it was determined that the invoices should be paid from the professionals' contract accounts, and attempts to recover the escrow would be made by other means at the Township's disposal. The Board inquired why other measures were not taken against the Applicants by the Zoning Official and Construction Official including placing liens on the property or taking the Applicants to court. The Secretary advised that Triple T Construction was an ongoing Township litigation matter and the Zoning Officer and Construction Official were advised by Administration that no further action should be taken against the Applicant until the Township had resolved their issues with the Applicant. The Board approved the payments from the Board professionals' accounts, and requested that letters be sent to the Applicants in another attempt to get the delinquent funds. The Board also requested that this matter be placed on the January 9, 2014 agenda for discussion on increasing the escrow fees, with a copy of the current fee ordinance provided to the Board members.

ORDINANCES FOR INTRODUCTION - None.

ORDINANCES REFERRED FROM COUNCIL - None.

BOARD PLANNER'S REPORT - None.

BOARD ATTORNEY'S REPORT - Board Attorney Tom Germinario advised the Board that a report had been received from Matthew Mulhall of M2 Inc regarding the Maser Aquifer Testing Plan for the Braemar at West Milford subdivision. He noted that there was nothing for the Board to do at this time, and any questions regarding the report or the plan can be provided to him for review and he will advise if they should be forwarded to the Board's hydrogeologist.

BOARD ENGINEER'S REPORT - John Hansen reported that the work has begun on the Sun Young Joo Major Soil Movement project at 55 Green Terrace Way. He also reported that the septic system for the proposed new library has been installed.

MISCELLANEOUS

Approval Of Invoices – Board Professionals

The invoices submitted by the Planning Board professionals for services performed during the months of September, October, and November 2013 were **unanimously approved** on a **motion** by Andrew Gargano and a **second** by Robert Nolan.

MINUTES

Motion was made to **approve** the minutes from the October 3, 2013 Regular Meeting of the West Milford Planning Board by Robert Nolan with a **second** by Andrew Gargano. The minutes were unanimously approved by those who were present at the meeting.

CORRESPONDENCE RECEIVED - *The Board reviewed the following correspondence received:*

Highlands Water Protection And Planning Act Correspondence

1. Application submitted to the NJDEP for a Highlands Preservation Area Approval with Health and Safety Waiver for Village on Ridge Water System Improvements submitted by Boswell Engineering, dated November 7, 2013.
2. Notification from the NJDEP advising that the Highlands Exemption issued on September 13, 2007 for Verizon Wireless, Block 16901; Lot 2, 3520 Route 23 regarding the collocation on an existing telecommunications tower, with proposed construction of an equipment shelter, fencing and a GPS unit, continues to be valid following review of the minor alterations to the original plan.

NJ Department of Environmental Protection Correspondence

1. TWA Permit Application notification received November 12, 2013 from MAP Engineering regarding 240 Long House Drive, Block 2202, Lot 5.01, for the repair of a malfunctioning septic system.
2. Comment Letter from the NJDEP, dated November 18, 2013 regarding 2 and 4 Belford Drive, with regard to UGST and potable wells, requesting additional information.
3. No Further Action Letter received from the NJDEP, dated September 26, 2013 received for 11 Forge Road, Block 4012; Lot 3.02 with regard to the removal of a 550 Gal UGST.
4. No Further Action Letter received from the NJDEP, dated November 4, 2013 received for 17 Landing Road, Block 2701; Lot 4 with regard to the removal of a 275 Gal AGST.
5. No Further Action Letter received from the NJDEP, dated November 25, 2013 received for 80 Larchmont Drive, Block 407; Lot 5 with regard to the removal of a 550 Gal UGST.
6. No Further Action Letter received from the NJDEP, dated November 15, 2013 received for 609 Snake Den Road, Block 11101; Lot 22 with regard to the removal of a 1000 Gal UGST.

Miscellaneous Correspondence

1. Braemar at West Milford – Aquifer Testing Plan Report from M2 Associates, dated November 27, 2013.
2. HEPSCD Re-Certification confirmation of soil erosion and sediment control plans following review of plans dated 09-25-13, certified through June 30, 2015.

ADJOURNMENT

Prior to adjourning, Acting Chairman Garcia advised that the Planning Board meeting scheduled for December 19, 2013 would be **cancelled** unless an issue arises that requires immediate attention. Board members will be advised. With no further business to come before the Planning Board, Acting Chairman Garcia **adjourned** the Regular Meeting of December 5, 2013 at **9:20 p.m.** on a **motion** made by Robert Nolan with a **second** by Glenn Wenzel.

Approved: February 27, 2014

Respectfully submitted by,

Tonya E. Cubby, Secretary