

TOWNSHIP OF WEST MILFORD

PLANNING BOARD

Minutes April 12, 2007 REGULAR MEETING

Chairman, Michael Tfank, called the meeting to order at 7:34 p.m. with the reading of the legal notice and pledge of allegiance.

ROLL CALL

Present: Steven Castronova, Michael Siesta, Clinton Smith, Kurt Wagner, Philip Weisbecker. Alternate: David Volpe. Chairman: Michael Tfank. Board Attorney: Bryant Gonzalez, Esq. Planning Director: William Drew, P.P. Consulting Engineer: Robert Kirkpatrick, P.E.

Absent: James O'Bryant, Douglas Ott, Leslie Tallaksen. Alternate: Thomas Harraka

Chairman appointed Mr. Volpe to sit for Douglas Ott.

PUBLIC PORTION

No one wished to speak.

SITE PLAN WAIVER APPLICATIONS – None.

APPLICATIONS

EUGENE & ELAINE PRAIS
Preliminary Subdivision #0410-1961
Variance #0430-0654
Block 8401; Lots 22 and 23
114 Dockerty Hollow Road; R-2 Zone
Request for time extension

The Board Attorney advised that the applicant had applied for a preliminary subdivision and variances in 2004. The applicant subsequently bifurcated the application and was granted variance approval by the Board. Since that time the applicant granted the Board time extensions in which to act on the application. Mr. Gonzalez noted that the Board had a certain time frame in which to act on a complete application or to dismiss it without prejudice.

The applicant, Eugene Prais, 114 Dockerty Hollow Road, West Milford, NJ was present and advised that he wished to keep the application open. He explained that he was still working with the DEP Division of Watershed Management and Senator Martin on obtaining the necessary permits. Mr. Prais explained the actions he had taken to date and further noted that he was waiting for a hearing by the DEP on his application. He granted the Board a one-year time extension in which to act on his application.

The Board Attorney requested that Mr. Prais submit a letter stating that in exchange for the Board not dismissing the application, that he would grant the Board an extension to April 12, 2008. The Board would then keep the application open and active. The Board requested that this letter be received with one week of this meeting.

MICHAEL ZUPP
Minor Subdivision #0610-1977
Variance # 0630-0734
Block 12110; Lots 6 & 17
463 Germantown Rd. & 9 Martha St.; R-2 Zone
Request for time extension

the applicant to mislead the Board. Mr. Pell thereafter apologized on behalf of the applicant to the Board for any confusion or misunderstanding.

With respect to why the applicant had not filed for a permit pursuant to the Highlands Water Protection and Planning Act, Mr. Pell indicated that this was a decision of the applicant upon the advice of counsel to stay the course with respect to its pending challenge of the constitutionality of the Highlands Act. He indicated that he has diligently tried to move the case before the Courts so that it could be resolved within a year but could make no assurances of this Resolution within that time period.

Mr. Pell then remarked that the applicant had not submitted for other agency approvals because the jurisdiction of the Highlands Council superseded any permits issued by other agencies with respect to the development of the subject property. In this respect he noted that there were a number of legal challenges by other developers to the constitutionality of the Highlands Act and that it was difficult for developers to proceed under the Highlands Act when issues such as: (1) procedures for transfer of development rights; (2) the lack of a regional master plan; (3) the lack of procedures under the Highlands Act for purchase of land pursuant to the Green Acres Trust Fund; (4) and the lack of rules and regulations governing the processing of permits made it difficult for a developer to know with any certainty how his project would be developed. Mr. Pell remarked that without these procedures being in place it was difficult for a developer to know what to do with its other jurisdictional approvals. His hope was that the Court would invalidate the Highlands Act within three to six months. The Board Attorney noted that this time frame was not realistic.

With respect to the subject property and the approvals already obtained, Mr. Pell indicated that the development of the property was consistent with the neighborhood and that the applicant's proposal was nothing like some of the larger proposals that have been offensive to the Township community. He further indicated that the applicant has been frustrated with what to do with the property and has approached as many as three (3) conservation groups to attempt to sell the property with no success. Mr. Pell indicated that under these circumstances it would be unfair not to grant an extension to the applicant.

The Board Chair indicated that while he understood the position of the applicant with respect to the litigation there were rules and regulations that the developer would have to comply with regardless of whether the Highlands Act changed the regulatory landscape or not. He further remarked that the applicant was not the first developer to appear before the Board to request an extension in light of delays experienced with respect to obtaining a permit under the Highlands Act. Despite the fact that delays might have been experienced this did not excuse an applicant from obtaining other legally required approvals and demonstrating to the Board that it has been diligent in pursuing these approvals. The Board Chair expressed his concern that the applicant had not been diligent in obtaining approvals from NJDEP, outside agencies and/or doing what was otherwise necessary to perfect its approval granted by the Board.

The Board attorney then asked Mr. Pell to provide the Board with an update with regard to where the applicant was with respect to obtaining its approvals from outside agencies and satisfying the conditions of the Board's Resolution granting preliminary approval.

Mr. Pell remarked that while he could not speak as to the status of the present approvals obtained, it was difficult for the applicant to obtain any comfort level with regard to outside agency approvals when the Highlands Regional Master Plan was not in place to know the impact on these outside agency approvals.

The Board Planner then indicated that the Passaic County Planning Board had held up its approval of the project subject to the applicant providing additional information with respect to a Deed for road widening as well as the relocation of the drainage inlets and other engineering details. The Board Planner noted that these items could clearly have been provided by the applicant regardless of its experiences with the NJDEP and the Highlands Act.

Board Member Phillip Weisbecker then commented that it was no excuse for the applicant that the Highlands Act prevented it from obtaining approvals from outside agencies. In this

regard, other applicants had appeared before the Board with Highlands' issues and have still obtained approvals from other agencies. He next remarked that since the applicant had approached conservation groups with respect to selling the land, the applicant might consider approaching the Township about a purchase of the property. He then reiterated that the applicant could not hinge his actions with outside agencies on Highlands approvals because given the experience of other developers with the Highlands the applicant would continue to come back for extensions. Again, he asked at what stage was the applicant in terms of its approvals from other agencies.

At this point Alex Zepponi, a member of the Applicant, was sworn and indicated that he agreed with the Board Planner that the items outstanding with the Passaic County Planning Board could be performed quite easily and would be done immediately if the Board granted an extension. With respect to the Hudson-Essex-Passaic Soil Conservation District, he believed the applicant had obtained its approvals a while ago but would confirm this for the benefit of the Board.

With respect to the permits required from the NJDEP, Mr. Zepponi indicated that the NJDEP had changed its position several times with respect to whether wetlands existed on the subject property. At first he indicated that the NJDEP had stated that there were no wetlands on the property but subsequently determined that wetlands existed in an area that was 30 feet in diameter. After that occurrence the wetlands were then determined to be in a different location approximately 85 feet away from where the NJDEP had originally stated. As such, the applicant had experienced frustration with the NJDEP because depending upon where NJDEP finally located the supposed wetlands, the configuration of the property might change.

With respect to why the applicant had not filed for the Highlands Act approvals, Mr. Zepponi noted that it was basically to remain consistent with its position in its pending litigation regarding the constitutionality of the Highlands Act where upon advice of counsel they made a decision not to file that application at this time.

The Board Attorney then indicated that with respect to extensions of time granted by the Board, the Board had a duty to ensure that approvals were being sought diligently by all developers that requested extensions. In this regard, if a developer has shown to the reasonable satisfaction of the Board that it has been diligent in obtaining approvals and has to no fault of his own been delayed then the Board is empowered to grant extended protections from zone changes to a developer. Where a developer is not diligent, and no delays can be shown however, the Board is not required to grant extensions to an applicant. If the Board were to grant an extension to the applicant it would basically ensure that the applicant would not be impacted by subsequent zone changes for whatever period of time the extension was effective. If, however, the Board denied the applicant's extension request, the applicant would still have the right to build but would not be protected from any subsequent zone change. In light of the fact that the Highlands Regional Master Plan was pending, the Board Attorney noted that zoning changes were likely to occur to some if not all of the zoning ordinances of the Township. Each municipality within the Highlands region would be subject to the changes required by the Regional Master Plan similar to the changes experienced by municipalities affected by the Pinelands Act in Southern New Jersey.

Mr. Zepponi then indicated that if the Board granted the applicant an extension it could deal with the issues before the County Planning Board and at least submit those to show the Board that it was being diligent in the pursuit of its approvals. It could furthermore submit proof to the Board with respect to all other outside agency approvals and demonstrate its compliance with other conditions of its prior approval.

The Board then opened the meeting to the public for comment on the application. With no members of the public coming forward to express an interest in this application, the Board promptly closed the public comment portion of the hearing.

MOTION made by David Volpe, seconded by Clinton Smith, to grant the applicant a 90-day extension of time.

On roll call vote: Yes - Steven Castronova, Michael Siesta, Clinton Smith, Kurt Wagner,
Philip Weisbecker, David Volpe.
No - Michael Tfank

ERNEST OBERER

COMPLETE: 02-22-07

Minor Subdivision #0510-1975

DEADLINE: 04-08-07

Block 14201; Lots 14 and 15
350 Germantown Road; R-3 Zone
Lot line adjustment to provide for the construction of a single-family dwelling.

William Drew, Planning Director, advised that the applicant was unable to submit his plans in time for the meeting and requested that the matter be carried. He further noted that the applicant had granted the Board an extension of time in which to hear the application. Matter carried to the May 24, 2007 meeting with no further notice.

RICHARD SLIFER

COMPLETE: 01-08-07

Preliminary & Final Site Plan #0620-0260AB

DEADLINE: 04-22-07

Block 15701; Lot 34
5 Allison Avenue, HC Zone
Preliminary and final site plan approval to permit improvements to the property to accommodate a commercial business.
Consideration of Resolution 2007 – 17

Matter carried at the applicant's request.

MEMORIALIZATION

PIONEER BAR & GRILL, INC.

RESOLUTION No. 2007 - 14

Preliminary & Final Site Plan #0620-0270AB

Block 2801; Lot 2
350 Warwick Turnpike, NC Zone
Preliminary and final site plan approval in connection with the reopening of a bar and restaurant.

MOTION made by Steven Castronova, seconded by Kurt Wagner, to memorialize the resolution.

On roll call vote: Yes - Steven Castronova, Michael Siesta, Clinton Smith, Kurt Wagner,
David Volpe, Michael Tfank
No - None

THOMAS A. CELANO

RESOLUTION No. 2007 - 15

Minor Subdivision #0410-1960

Variance 0430-0669

Block 5309; Lot 1
Cahill Cross Road; R-2 Zone
APPROVED: Request for time extension.

MOTION made by Steven Castronova, seconded by Michael Siesta, to memorialize the resolution.

On roll call vote: Yes - Steven Castronova, Michael Siesta, Clinton Smith, David Volpe,
Michael Tfank
No - None

NEW YORK SMSA LIMITED PARTNERSHIP

D/B/A VERIZON WIRELESS (LARSEN ROAD)

RESOLUTION No. 2007 - 16

Preliminary & Final Site Plan #0520-0268AB

HIGHLANDS WATER PROTECTION AND PLANNING ACT

Notices that the following applicants have applied for a Highlands Applicability Determination:

Kurt Renzland, 900 Burnt Meadow Road, Block 4601; Lot 16. Noted and filed.

ADJOURNMENT

Meeting adjourned by unanimous consent at 8:59 p.m.

Respectfully submitted,

Grace R. Davis
Secretary

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With respect to the permits required from the NJDEP, Mr. Zepponi indicated that the NJDEP had changed its position several times with respect to whether wetlands existed on the subject property. At first he indicated that the NJDEP had stated that there were no wetlands on the property but subsequently determined that wetlands existed in an area that was 30 feet in diameter. After that occurrence the wetlands were then determined to be in a different location approximately 85 feet away from where the NJDEP had originally stated. As such, the applicant had experienced frustration with the NJDEP because depending upon where NJDEP finally located the supposed wetlands, the configuration of the property might change.

With respect to why the applicant had not filed for the Highlands Act approvals, Mr. Zepponi noted that it was basically to remain consistent with its position in its pending litigation regarding the constitutionality of the Highlands Act where upon advice of counsel they made a decision not to file that application at this time.

The Board Attorney then indicated that with respect to extensions of time granted by the Board, the Board had a duty to ensure that approvals were being sought diligently by all developers that requested extensions. In this regard, if a developer has shown to the reasonable satisfaction of the Board that it has been diligent in obtaining approvals and has to no fault of his own been delayed then the Board is empowered to grant extended protections from zone changes to a developer. Where a developer is not diligent, and no delays can be shown however, the Board is not required to grant extensions to an applicant. If the Board were to grant an extension to the applicant it would basically ensure that the applicant would not be impacted by subsequent zone changes for whatever period of time the extension was effective. If, however, the Board denied the applicant's extension request, the applicant would still have the right to build but would not be protected from any subsequent zone change. In light of the fact that the Highlands Regional Master Plan was pending, the Board Attorney noted that zoning changes were likely to occur to some if not all of the zoning ordinances of the Township. Each municipality within the Highlands region would be subject to the changes required by the Regional Master Plan similar to the changes experienced by municipalities affected by the Pinelands Act in Southern New Jersey.

Mr. Zepponi then indicated that if the Board granted the applicant an extension it could deal with the issues before the County Planning Board and at least submit those to show the Board that it was being diligent in the pursuit of its approvals. It could furthermore submit proof to the Board with respect to all other outside agency approvals and demonstrate its compliance with other conditions of its prior approval.

The Board then opened the meeting to the public for comment on the application. With no members of the public coming forward to express an interest in this application, the Board promptly closed the public comment portion of the hearing.

MOTION made by David Volpe, seconded by Clinton Smith, to grant the applicant a 90-day extension of time.

On roll call vote: Yes - Steven Castronova, Michael Siesta, Clinton Smith, Kurt Wagner,
Philip Weisbecker, David Volpe.
No - Michael Tfank

ERNEST OBERER COMPLETE: 02-22-07
Minor Subdivision #0510-1975 DEADLINE: 04-08-07
Block 14201; Lots 14 and 15
350 Germantown Road; R-3 Zone
Lot line adjustment to provide for the construction of a single-family dwelling.

William Drew, Planning Director, advised that the applicant was unable to submit his plans in time for the meeting and requested that the matter be carried. He further noted that the applicant had granted the Board an extension of time in which to hear the application. Matter carried to the May 24, 2007 meeting with no further notice.

RICHARD SLIFER COMPLETE: 01-08-07
Preliminary & Final Site Plan #0620-0260AB DEADLINE: 04-22-07
Block 15701; Lot 34
5 Allison Avenue, HC Zone
Preliminary and final site plan approval to permit improvements to the property to accommodate a commercial business.
Consideration of Resolution 2007 – 17

Matter carried at the applicant's request.

MEMORIALIZATION

PIONEER BAR & GRILL, INC.
RESOLUTION No. 2007 - 14
Preliminary & Final Site Plan #0620-0270AB
Block 2801; Lot 2
350 Warwick Turnpike, NC Zone
Preliminary and final site plan approval in connection with the reopening of a bar and restaurant.

MOTION made by Steven Castronova, seconded by Kurt Wagner, to memorialize the resolution.

On roll call vote: Yes - Steven Castronova, Michael Siesta, Clinton Smith, Kurt Wagner,
David Volpe, Michael Tfank
No - None

THOMAS A. CELANO
RESOLUTION No. 2007 - 15
Minor Subdivision #0410-1960
Variance 0430-0669
Block 5309; Lot 1
Cahill Cross Road; R-2 Zone
APPROVED: Request for time extension.

MOTION made by Steven Castronova, seconded by Michael Siesta, to memorialize the resolution.

On roll call vote: Yes - Steven Castronova, Michael Siesta, Clinton Smith, David Volpe,
Michael Tfank
No - None

NEW YORK SMSA LIMITED PARTNERSHIP
D/B/A VERIZON WIRELESS (LARSEN ROAD)
RESOLUTION No. 2007 - 16
Preliminary & Final Site Plan #0520-0268AB

HIGHLANDS WATER PROTECTION AND PLANNING ACT

Notices that the following applicants have applied for a Highlands Applicability Determination:

Kurt Renzland, 900 Burnt Meadow Road, Block 4601; Lot 16. Noted and filed.

ADJOURNMENT

Meeting adjourned by unanimous consent at 8:59 p.m.

Respectfully submitted,

Grace R. Davis
Secretary