

**TOWNSHIP OF WEST MILFORD  
PLANNING BOARD**

**Minutes  
September 27, 2007  
REGULAR MEETING**

Michael Tfank, Chairman called the regular meeting of the Township of West Milford Planning Board to order at 7:27pm, with a reading of the Legal Notice and the Pledge of Allegiance.

**ROLL CALL**

Present: Steven Castronova, Michael Siesta, Clinton Smith, Leslie Tallaksen, Kurt Wagner, Philip Weisbecker, Thomas Harraka, Chairman Michael Tfank, Board Attorney Bryant Gonzalez, Planning Director William Drew, P.P., Board Engineer Robert Kirkpatrick

Absent: Douglas Ott, David Volpe,

Chairman Michael Tfank asked Thomas Harraka to sit for Douglas Ott.

A moment of silence was held in tribute to Planning Board member James O'Bryant who passed away on September 10, 2007.

**PUBLIC PORTION**

The Chairman opened the meeting to the public. Linda Connelly, 278 Wooley Road, West Milford, addressed the Planning Board regarding the Braemar at West Milford application. She read a prepared statement to the Board that included a request for a review of the draft well testing ordinance at the next Planning Board meeting, with a recommendation to be made to the Township Council by October 3, 2007. With no one else present wishing to be heard, a motion to close the public portion of the meeting was made by Michael Siesta, with a second by Clinton Smith.

William Drew, Board Planner, responded to some of the comments made by Mrs. Connelly, noting that the houses that were built on Wooley Road, in connection with the Braemar application, were constructed in accordance with land use law and did not require Planning Board approval.

**SITE PLAN WAIVER APPLICATIONS**

None.

**APPLICATIONS**

**CARL BIERWAS**  
**Minor Subdivision #0410-1964**  
**Bulk Variance #0430-0665**  
Block 8201; Lot 2  
1945 Macopin Road, R-1 Zone  
**Request for Time Extension.**

The applicant was present to testify before the Board and was sworn in by Board Attorney Bryant Gonzalez. He requested the Board grant him a one year time extension in order to file perfected deeds. Mr. Bierwas had received a time extension from the Board on two prior occasions, the first in 2005, and also in 2006. He requested a time extension of one year in order for his engineer, who had been ill, to prepare the deeds for filing. Additionally, he requested that the Board grant him relief from well drilling until he filed for building permits. Mr. Gonzalez reminded the applicant that this was a condition of approval prior to the deeds being signed. Mr. Drew advised the Board that a nine month time extension would be more appropriate.

The meeting was opened to the public. With no one present wishing to be heard on this matter, the Chairman closed the public portion on a motion by Philip Weisbecker and a second by Michael Siesta.

**Motion** made by Leslie Tallaksen, seconded by Thomas Harraka, to approve the request by Carl Bierwas for a Time Extension for nine months.

On roll call vote:   Yes - Steven Castronova, Michael Siesta, Clinton Smith, Leslie Tallaksen, Kurt Wagner, Philip Weisbecker, Thomas Harraka, Chairman Michael Tfank.  
                          No - None

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**CASTLE ROCK ESTATES, LLC**  
**Preliminary Subdivision #0310-1958A**  
**Variance #0430-0651**  
Block 9901; Lot 7  
870 Union Valley Road; R-1 Zone  
**Request for Time Extension**

Board Attorney Bryant Gonzalez noted that the applicant had contacted the Planning Department and asked to carry this time extension request until the October 25, 2007 Planning Board meeting.

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**SCOTT FLAMMER**  
**Soil Fill Application #0760-0283**  
Block 5611; Lot 4  
99 Center Street; LR Zone  
**Seeking Major Soil Fill Permit.**

The applicant's engineer, Mark Palus, P.E., of Map Engineering, Kinnelon, NJ and the applicant Scott Flammer, 99 Center Street, were present to testify before the Board and were sworn in by Board Attorney Bryant Gonzalez. Mr. Palus reviewed the events that led up to the applicant filing a major soil fill permit application. He noted that soil had been brought in initially on the subject site without a permit. Upon notification of the violation, the applicant stopped all work on the site and subsequently filed for a major soil fill permit. The applicant had appeared before the Board on July 12, 2007, at which time various concerns were raised by the Board Engineer Robert Kirkpatrick. The applicant withdrew the application without prejudice, addressed the issues that were of concern to the Board Engineer, and came before the Board at this meeting once again seeking approval of his major soil fill permit. Chairman Michael Tfank inquired about soil contamination verification, to which Mr. Flammer replied that the soil brought to the site was purchased from Atlas Excavation and that certification that the soil is free of contaminants could be made available. The Board Engineer expressed concerns about the soil that was brought to the site containing debris, including concrete. The Board professionals discussed ways to determine whether the fill was free of contaminants, and the Board Engineer noted that an odor test could be done. He also stated that the certification of the soil could be made a condition of approval for the permit. The Board Chairman added that this should be considered as a common procedure in other soil fill permit applications.

Mr. Drew inquired whether the applicant had any activity on the site since he was before the Board in July. Mr. Flammer replied that four truckloads of soil had been brought in, but upon permit approval from the Board, the soil containing concrete debris would be removed. Mr. Palus stated that Mr. Flammer had received permission from the owner of an adjoining property to remove an oak tree. In addition, the top layer of gravel mix would be removed. Exhibit A-1, a letter from Robert Capini, adjacent property owner, was entered into evidence and presented to the Board for review. Board member Thomas Harraka inquired about the compaction of the soil and whether a soil bearing

test would be done to determine stability. The Board Engineer explained the test to those present at the hearing, noting that the test determines the maximum compaction of material. He advised that the Board could request certification of this as a condition of approval. Mr. Palus reviewed the guardrail specifications that would be installed, stating that it would be composed of wood and metal and would be appropriate for residential use.

The Chairman opened the meeting to the public. With no one present wishing to be heard on this matter, the public portion was closed by unanimous consent.

**Motion** made by Kurt Wagner, seconded by Leslie Tallaksen, to approve the application by Scott Flammer for a Major Soil Fill Permit with the conditions outlined.

On roll call vote:    Yes - Steven Castronova, Michael Siesta, Clinton Smith, Leslie Tallaksen, Kurt Wagner, Philip Weisbecker, Thomas Harraka, Chairman Michael Tfrank.  
                          No - None

The Board Attorney noted the conditions to include certification of suitability by the company (Atlas Excavation) supplying the fill, that all broken concrete be removed, and the contractor certify compaction test results.

Mr. Palus inquired when the applicant could begin work on the site. Mr. Gonzalez advised that the resolution would be available for memorialization on October 25, 2007, but if the applicant chooses to proceed without the resolution, he may do so at the risk of being challenged.

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**NEW YORK SMSA LIMITED PARTNERSHIP  
D/B/A VERIZON WIRELESS (CANISTEAR ROAD)  
Preliminary & Final Site Plan #0720-0285AB  
Bulk Variance #0730-0771**

Block 16901; Lot 2

3520 Route 23; R-4 Zone

**Preliminary & Final Site Plan application and Bulk Variance relief requested for rear yard setback to permit the applicant to collocate on an existing telecommunications facility.**

The applicant was represented by David Soloway, Esq. of Vogel, Chait, Collins & Schneider, Morristown, NJ. Mr. Soloway explained that the proposed telecommunications facility was to be collocated upon an existing monopole at the subject property at 3520 Route 23. The existing monopole was at a height of 155 feet. Soloway indicated that the intent of the applicant was to locate 12 antennas at an elevation of 139 feet on the existing telecommunications monopole along with the installation of an equipment shelter measuring approximately 11.5 feet by 20 feet mostly within the existing equipment compound on the subject property. He further explained the nature of the bulk variance with respect to rear yard setback was to allow for an expansion of the existing equipment compound to allow for the inclusion of the proposed equipment compound to service the Verizon Wireless telecommunications facility. Mr. Soloway noted that the zone required a rear yard setback of 125 feet and that 61 feet were existing, but the proposal was to expand the equipment compound area such that the rear yard setback would be 46 feet. The applicant's attorney then indicated that he had Keith Smith, P.E. of French & Parrello, Wall, NJ available to provide engineering testimony, Dan Dichter, Verizon Wireless, radio frequency engineer, to provide radio frequency engineering testimony, and Christopher Neville, P.E., P.P., to provide planning testimony on the application.

Mr. Smith was sworn in and provided his qualifications and was accepted by the Board for purposes of providing site plan engineering testimony. He thereafter asked that a colorized version of Sheet SP-1 of the plans submitted be marked as Exhibit A-1. Exhibit A-1, he noted, depicted the property and facilities as they currently exist and as

proposed. Referring to this exhibit, Mr. Smith indicated that the existing monopole was 155 feet in height and that there were two (2) existing dwellings plus a ski shop on the subject property. In describing the property, he indicated that the monopole was located towards the rear of the property and that there were three (3) telecommunications carriers already located on the monopole. A gravel access was provided to the existing telecommunications facilities from both Canistear Road and Route 23.

Mr. Smith then referred to Sheet SP-2 of the plans submitted and indicated that the applicant was looking to install antennas at a height of 139 feet utilizing a triangular platform. Mr. Soloway then noted that the applicant could provide a "T-Arm" mounting if the Board so desired.

Mr. Smith described the proposed equipment shelter and noted that it would be located to the north of the existing equipment shelter and would have the dimensions of 20 feet in length, 11 feet in width and 10 feet in height. The surface of the proposed area where the equipment compound was to be expanded was gravel and the applicant chose this location so as to minimize any additional disturbance to the subject property.

Mr. Smith proceeded to discuss the need for the rear yard setback variance. In this regard, he noted that the equipment shelter would further encroach upon the rear yard setback and the proposed setback was now to be 46 feet from what was formerly 61 feet. He indicated that the variance was needed because the applicant did not want to disturb additional property, and where the compound would be located, the site had already been disturbed from previous improvements such that the applicant would be building upon already disturbed area versus newly disturbed area.

With respect to other site plan aspects of the application, Mr. Smith testified that there would be no lighting plan but rather a 70 watt light bulb set on a sensor at the equipment compound area. In terms of signage, there would only be a sign on the door of the equipment compound. No water service or sewer service was proposed for the equipment compound area. Maintenance of the equipment would be undertaken once a month and a backup generator was not proposed. Instead of a backup generator, the applicant was proposing to install an emergency port for power, but no generator. With respect to landscaping, none was proposed as the existing structures basically screened the proposed structures. Pedestrian traffic was limited in the area and there was minimal visibility of the equipment compound area by vehicular traffic, so landscaping to screen the structures was not deemed necessary by the applicant.

The Board then discussed with the applicant's attorney whether a certification could be provided that the monopole could withstand the additional weight to be added by the proposed antennas. The applicant's professionals agreed that this could be imposed as a reasonable condition of approval.

A discussion ensued as to the time period for which inspections could be made of the monopole for structural integrity. In this regard, it was inquired of Mr. Smith as to whether there was a standard in the industry for inspection of a monopole for structural integrity. He indicated that he was not aware of such a standard. As such, the Board indicated that it would like to have the monopole inspected at least once every three (3) years as it has required of other applications for collocation on a monopole in the Township.

Mr. Soloway then had Dan Dichter come forward to explain why the site was needed and how it would service the existing service area for Verizon Wireless. Board Member Thomas Harraka inquired as to whether the proposed facility was an in-fill site or a supplementary site. Mr. Dichter responded that the site would serve both purposes as it was essential to Verizon Wireless' coverage on Route 23 and Canistear Road.

A discussion then commenced as to whether a generator should be included in the equipment compound area. Mr. Soloway responded that the applicant had originally prepared plans to have a equipment compound area that was larger and which would

include a generator, however, the applicant became concerned as to whether this would become an issue for the Highlands Commission. As such, the generator proposal was not included in the plans submitted to the Board. However, a sheet was prepared in the drafting stages such that a drawing of how the equipment compound with a backup generator would be accommodated on site was available for the Board to review. Mr. Soloway asked that a sheet which was marked as Sheet 3 of 7 be marked into evidence as Exhibit A-2. Exhibit A-2, he noted, depicted a concrete pad measuring 6 feet by 12 feet upon which would be located a proposed generator within the existing equipment compound area on the subject property. Mr. Soloway remarked that the proposed backup generator, if included with the proposed equipment compound, would not require additional variance relief.

Mr. Soloway then had Christopher Neville testify to the Board with respect to the variance relief requested for rear yard setback pursuant to N.J.S.A. 40:55D-70(c)(2). Neville referred to Sheet SP-2 of the plans submitted and indicated that he agreed with Mr. Smith that the placement of the proposed equipment compound to the north of the existing equipment compound was the best location in terms of planning. Mr. Neville then indicated that the application, as proposed, advanced the purposes of Municipal Land Use Law as well as the telecommunications law of the Federal Government. In this regard, he noted that the proposal would enhance competition within the telecommunications industry as well as with land line providers. The application also furthered the purposes of the Zoning Ordinance in encouraging collocation upon existing facilities.

The Board Engineer then questioned the visibility of the site from the existing dwellings on the subject property. Mr. Neville responded that because the owner of the site had consented to the application, the aesthetics were not a real issue.

The Board Engineer then noted that, with respect to maintenance of the site and the ability of the Township to properly assess the value of the structures, there should be proof of lease authority provided to the Township. In this regard, Mr. Soloway responded that a redacted lease would be submitted as a condition of approval.

Mr. Soloway then indicated that the monopole was approved by the Board of Adjustment several years ago by way of use variance and that the proposed collocation upon the monopole was a permitted use under the Ordinances of the Township.

Mr. Soloway indicated that the applicant would agree, as a condition of approval, to work with the Board Engineer and Planner to develop a landscaping plan for the site with any unresolvable issues to be decided by the Board.

The applicant, New York SMSA Limited Partnership, d/b/a Verizon Wireless (Canistear Road), had engaged the services of a professional transcriber, Joanne Oppermann, C.C.R., Precision Reporting of Bridgewater, NJ for this application. The testimony, as provided in the transcription, is on file in the Planning Office of the Township of West Milford and available for review during regular business hours.

**Motion** made by Michael Siesta, seconded by Kurt Wagner, to approve the Preliminary and Final Site Plan with Bulk Variance relief for rear yard setback to permit the applicant, New York SMSA LP, d/b/a Verizon Wireless, to collocate on an existing telecommunications facility.

On roll call vote:    Yes - Steven Castronova, Michael Siesta, Clinton Smith, Leslie Tallaksen, Kurt Wagner, Philip Weisbecker, Thomas Harraka, Chairman Michael Tbank.  
                              No - None

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## **PLANNING BOARD ATTORNEY'S REPORT**

Board Attorney Bryant Gonzalez advised that he would recuse himself from the Passaic Valley Water Commission application due to a conflict of interest. He added that his firm represents Passaic Valley Water Commission on several matters.

Prior to departure, Mr. Gonzalez gave his Attorney's Report to the Board. He reported that Castle Rock Estates, LLC had filed an appeal with the Supreme Court regarding the Highlands regulations. Castle Rock had challenged the Highlands in the Appellate Division and had lost, so they were moving the matter to the Supreme Court. They have filed a petition for certification and the Planning Board Attorney has subsequently prepared documents to deny petition for certification. He noted that it was doubtful the Supreme Court would grant the petition for certification.

Mr. Gonzalez left the meeting at this time.

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### **PASSAIC VALLEY WATER COMMISSION Conditional Use with Preliminary & Final Site Plan #0720-0301AB**

Block 12801; Lot 20

High Crest Drive; R-4, LR Zone

### **Conditional Use with Preliminary & Final Site Plan application for reconstruction and modification of the High Crest Pump Station.**

Mr. Weisbecker inquired whether it was advisable to hear the following application without an attorney present. Mr. Drew explained that the application was for conditional use approval to provide reconstruction of an essential service, and as such, was exempt from formal approval per the M.L.U.L. He further explained that the Board does not have to grant the site plan approval, but that the Board is hearing this application for a conditional use.

Victor Herlinsky, Esq. of Nowell, Amoroso, Klien and Beiman, PA of Hackensack, NJ attorney for the applicant Passaic Valley Water Commission, explained the purpose of the application for the Board. He stated that the system, High Crest Pump Station, serviced several hundred residents in the High Crest Lake area. He noted that the existing structure, encompassing 450 square feet, was damaged by a fire. The applicant's intention is to expand this structure by 90 square feet, and replace the old structure. He advised that this is the only system that is available to the residents and that it is essential to supplying water to the residents in the area. He expressed concern that if the damaged pumps fail, there would be no alternative source for providing water.

Kevin Byrne, P.E., was asked to provide qualifications, and was sworn in by Board Chairman Michael Tfrank. Mr. Byrne testified that approximately 250 homes are served by the High Crest Pump Station. He stated that the water comes from Butler, across Route 23, and is stored in two tanks. The Passaic Valley Water Commission took over the system and pump station in 1991. He testified that new pumps would be installed, the system upgraded, and the proposed structure will be built around the current structure that was damaged by fire about nine months ago.

Mr. Weisbecker questioned whether the applicant had received Highlands Exemption, to which the applicant's engineer replied that they have a letter of exemption.

The applicant's attorney noted that an easement had been purchased from the landowner, that it had never been challenged, and advised that the applicant was not in the position to perfect the easement. He then requested that the Board grant a waiver to the applicant for the survey of the 14 acres, adding that this was expensive for a minor service. Mr. Kirkpatrick, Board Engineer, stated that the survey was requested in order for a judgment to be made as to right of way. The Board questioned the applicant's attorney about access to the site for construction and the subsequent maintenance. Mr.



**Motion** made by Kurt Wagner, seconded by Philip Weisbecker, to approve Resolution No. 2007-32.

On roll call vote:   Yes - Steven Castronova, Michael Siesta, Clinton Smith, Philip Weisbecker, Thomas Harraka, Michael Tfank.  
                          No - None.

#### **ORDINANCES FOR INTRODUCTION**

**Fence Ordinance:** Mr. Drew advised that the fence ordinance discussion should be carried to the Workshop on October 4, 2007.

#### **ORDINANCES REFERRED FROM COUNCIL**

**Proposed Well Testing Ordinance:** The Chairman advised that the Draft Well Testing Ordinance had been distributed to the Board members for review and requested that they be prepared for a full discussion at the October 4, 2007 Workshop with a recommendation to the Council to follow. Mr. Drew advised that he had scheduled a meeting with the Board Attorney and the Board Engineer for the following Tuesday in order to review the ordinance prior to the Board's Workshop. Mr. Weisbecker noted that Matthew Mulhall, the Township's hydro geologist and author of the ordinance, may be available for the Board Workshop. Mr. Drew replied that he would be in contact with Mr. Mulhall requesting his attendance at the October 4, 2007 meeting.

#### **PLANNING DIRECTOR'S REPORT**

Planning Director William Drew reported that he had been advised that the Township will be receiving an application by Inserra Supermarkets for a complete facelift and upgrade of the Shop Rite property in the center of town. Chair Michael Tfank inquired if this project will be affected by the County Corridor Enhancement program. Mr. Drew replied that it may not as it is situated along Marshall Hill Road. The Chairman inquired if the Township had received any funds from Passaic County for this program, and Mr. Drew replied in the negative. The Chairman requested that a letter be sent to the County requesting that the funds be made available to the Township.

#### **MISCELLANEOUS**

Mr. Drew advised that he had been in contact with Wayne McCabe, Planning Consultant, who had provided training for the Planning Board members in the spring of 2006, in accordance with new State of New Jersey requirements. He further advised that the Board has not yet received certification from the State; certification is being delayed until Mr. McCabe provides the test results from the training session to the State. Board member, Steven Castronova, will receive training on October 18, 2007 in Hardyston, NJ along with several Board of Adjustment members.

#### **MINUTES**

**Motion** made by Philip Weisbecker, seconded by Michael Siesta, to approve the minutes of the September 6, 2007 Regular Meeting.

On a voice vote, all eligible members voted in favor to approve the minutes of the September 6, 2007 Regular meeting.

#### **COMMUNICATIONS**

The following communications were presented to the Board:

Letter to Castle Rock Estates, LLC from Glenn Kienz, Esq., dated September 4, 2007, advising Castle Rock provide documentation regarding Block 9901, Lot 7 before the Board can proceed with the application for extension of Preliminary Subdivision Approval.

Letter from the Planning Department to Corey Piasecki, NJ DCA, Office of Smart Growth, Grant #00-6076-02 – Request for Reimbursement for \$28,177.87 for the balance due regarding the West Milford Smart Growth Plan grant.

Letter from Passaic County Planning Department dated August 27, 2007 regarding Walgreen's (Sunny Blue, LLC); Block 5701; Lot 1; withholding approval, recommending that the applicant consider the building setback to be no greater than what is existing, with parking in the rear and the side, conforming with the setback across the street and what is recommended for the proposed Quik Chek. Requesting additional documents from applicant.

Letter from Passaic County Planning Department dated August 28, 2007 regarding Henry Jecker, Block 9901; Lot 7; request for revised plans showing sight triangle, and clearing of triangle to allow proper visibility. Requirement for deed to Passaic County for 8-foot wide strip of land on Union Valley Road waived.

ANJEC – 2007 Annual Environmental Congress – October 13, 2007 - *The Heat Is On* – A day of discussion and workshops on energy and climate change strategies for New Jersey – Conference Center, West Windsor, NJ.

Letter to Kenneth Eberle, Braemar at West Milford, LLC, regarding charges for TRC professional services.

Notice from Gerald Gardner Assoc., regarding Timothy Gulla, 57 Lakes Park Terrace, Block 4201; Lot 8; General Permit #25 application for the repair of an existing septic system.

## **HIGHLANDS WATER PROTECTION AND PLANNING ACT**

The following notices and correspondence was presented to the Board:

Notice of Technical Incompleteness dated August 9, 2007 for Ernest Oberer, Block 14201; Lot 14; regarding the minor subdivision of Lots 14 and 15, and the new requirements as a result of this lot line adjustment. A certified site plan must be submitted to the DEP for review to continue.

Notice of Technical Incompleteness dated August 10, 2007 for Bik Gill, Block 16001; Lot 9; regarding documents that must be submitted prior to consideration for exemption.

Notice of Technical Incompleteness dated August 28, 2007 for Bruce Patrono, Block 3705; Lot 27; regarding clarification of lot number on documents, and certification that dwelling is intended for owner or family member.

Letter dated August 28, 2007 to Valley Ridge Development Company, Block 8002; Lot 4; regarding Highlands Applicability Determination Expiration for Valley Ridge.

Letter dated August 28, 2007 to Boulder pond, LLC, Block 5404; Lot 8; and Block 5301; Lot 20; regarding Highlands Applicability Determination Expiration for Eagle Ridge at West Milford.

**ADJOURNMENT**

**Motion** by Thomas Harraka and a second by Michael Siesta to adjourn the Regular Meeting of the West Milford Planning Board at 9:58 p.m. On a Voice Vote, all were in favor.

Respectfully submitted,

Tonya E. Cubby  
Secretary