

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

January 7, 2016

Regular Meeting

Following the Reorganization Meeting, Chairman Christopher Garcia opened the January 7, 2016 Regular Meeting of the West Milford Planning Board at **7:55 p.m.** with a reading of the Legal Notice, followed by the Pledge of Allegiance.

ROLL CALL

Present: Mayor Bettina Bieri, Steven Castronova, Andrew Gargano, Warren Gross, Douglas Ott, Geoffrey Syme, Glenn Wenzel, Chairman Christopher Garcia, Board Attorney Thomas Germinario, Board Planner Chuck McGroarty.

Absent: Linda Connolly, Councilman Lou Signorino, Board Engineer Paul Ferriero,

Chairman Garcia requested Steven Castronova to sit in for one of the regular Board members and advised that a quorum was present to hold this regular meeting. Mr. Castronova inquired whether he could be moved to the Alternate #1 position on the Planning Board. Mayor Bieri advised that the alternate positions are the Township Council's appointments, not the Mayor's, and he should make his request to them.

PUBLIC PORTION

Chairman Garcia opened the meeting for public comment and the following addressed the Board:

Richard Randazzo, 278 Wooley Road, addressed the Board about a hearing at the last Planning Board meeting, and noted that one of the Board members stated how pleased he was to see a group of people attend the meeting for a Board application (Braemar at West Milford). These people, he stated, came to the meeting because they had a valid concern. He further stated that he did not know that there was a legal requirement for the Board to vote the way it had, and at a prior meeting two Board members voted against the advice of the Board professionals. He observed that when it came to the December 17, 2015 meeting, it appeared that the Board wanted to protect the applicant, and the Board was accommodating the applicant with the changes that they proposed. He made several comments about the well testing results and the model home, and then stated that he did not understand the "yes, with reservation" vote by one of the Board members, and he felt that it should have been a "no" if there were any reservations at all. Mr. Randazzo stated that he fought for the well ordinance and well testing because it personally affected him, but with the approval of 9 homes, and a possibility of 3 more, he wondered if they will be in the same situation as the Wooley Road house and not be sold? He expressed his displeasure and disappointment at the result of the Board's vote, and suggested that the Board should have challenged this matter, and if so, he would have supported them in court. He observed that he would not need to attend the Board meetings in the future, and he was not placing the blame for the outcome [on the Board application] on any one Board member. Mr. Randazzo left the meeting following his comments.

With no one else present wishing to address the Planning Board, the public portion was **closed** by unanimous vote on a **motion** by Mayor Bettina Bieri, with a **second** by Glenn Wenzel.

APPLICATIONS

NEW APPLICATIONS – None.

PENDING APPLICATIONS – None.

MEMORIALIZATIONS

RESOLUTION NO. 2016 – 06

BRAEMAR AT WEST MILFORD, LLC

(Greene Valley Estates) #0610-1910B

Final Major Subdivision - Satisfaction of Conditions Precedent

Block 10001; Lots 14, 19, 20, 23

Wooley Road; R-3 and R-4 Zones

Granted: Final Major Subdivision approval based on Satisfaction of the Conditions Precedent of the Conditional Final Major Subdivision Approval for Braemar at West Milford LLC, Block 10001; Lots 14, 19, 20, 23, under Planning Board Resolution No. 2012-16 dated December 6, 2012, and Planning Board Resolution No. 2015-09 dated September 24, 2015.

Motion by Steven Castronova, with a **second** by Warren Gross to approve Resolution No. 2016-06 granting final major subdivision approval with satisfaction of conditions precedent for BRAEMAR AT WEST MILFORD (Greene Valley Estates), Block 10001, Lots 14, 19, 20, 23. Prior to the Board vote on this matter, Mayor Bieri stated that she felt that the entire Planning Board did, indeed, listen to the public, and it was very heartfelt, and it was very emotional, and that she wanted to reiterate,

that on a personal level, she wanted to vote no on this application. But the Board relied on its professionals and what she heard from our professional, and the applicant's professional, was that the well testing ordinance was adhered to and essentially passed. Mayor Bieri stated that it was based on this reason why she said, "with reservations" because on a personal level, she would have wanted to say no. But in her role as Planning Board member, she was bound to uphold the existing laws, whether they are flawed or not, and believes that on the testimony presented, that the laws were upheld, and that is why she voted in the affirmative at the hearing, and that was why she was voting in the affirmative on the resolution. Chairman Garcia commented that he would have responded to Mr. Randazzo's comments, were he still present, about the Board challenging this matter if they thought there was anything legally wrong. In his opinion, there was nothing legally wrong. Mayor Bieri commented that it may have been morally wrong, and wrong in other ways, but not legally. Chairman Garcia noted that on an emotional level, he may not have been in favor of approving the application, but he did not want to expose the Board to the additional liability that would have occurred. Following these comments, the Secretary was requested to conduct a roll call.

Eligible to Vote Roll Call

Yes: Mayor Bettina Bieri, Steven Castronova, Warren Gross, Chairman Christopher Garcia.

No: None.

Motion approved.

NEW OR ONGOING BUSINESS

With regard to the resolution to approve the Township of West Milford Planning Board's adoption of the Land Use Plan Element of the Township's Master Plan, Chairman Garcia advised that the Master Plan Committee met before the last meeting (December), but no updates have been provided to Board Planner Chuck McGroarty. He noted that the MP Committee was in agreement with Mr. McGroarty's feedback about the W.M. Board of Adjustment report, but further clarification may be needed from the Board of Adjustment with regard to their concerns and comments. Chairman Garcia noted that he would send an email outlining the MP Committee discussions to Mr. McGroarty, with a copy to the Secretary for the file. With regard to carrying the resolution listed on the agenda, Mr. McGroarty advised that he would wait until he met with the MP Committee to clean up some of the details on the resolution. He suggested that the Board delay the adoption of the amendment to the Land Use Plan for 2 to 3 months, with the priority at this time being the affordable housing matter. He noted that the land use plan ordinance needed to be updated, and there was quite a bit of work to be done, adding that the Ordinance Committee may be busy this year with the updates needed. Chairman Garcia requested that the resolution to approve the Land Use Plan adoption be removed from the agenda until the Board is ready for a public hearing and vote.

On another matter, Mr. Castronova commented that he has lived in the Township for 55 years and has not seen any major improvements to the West Milford Town Hall during that time. He recommended that pillars with lights be installed at the entrance and exit on Union Valley Road to provide clearer definition of the driveway. He recalled a recent rainy evening when he had difficulty determining where the edge of the pavement was when entering the site, and suggested that these improvements could be made at the same time that the new library construction is in progress. Board member (and Library Board member) Andrew Gargano noted that this would involve a change order to do the driveway in conjunction with the library, and it would be expensive. Board Attorney Thomas Germinario advised that this was not a Planning Board matter. Mayor Bieri observed that the Council was meeting in February to review the facilities plan and that this may be added for discussion, but did not want to commit to anything until they knew what the plan was.

ORDINANCES FOR INTRODUCTION

Mr. Gargano raised the issue of bamboo plants as an invasive species, and noted that several towns in the region are having difficulty removing it. He suggested that the Ordinance Committee add it to their discussions. Mr. Germinario opined that prohibition of it would most likely not be permissible under the M.L.U.L. since it was not a land use matter, but it may be under Health jurisdiction as a public nuisance, under the general ordinances, and would be the Council's jurisdiction. He noted that the only way the Planning Board could address this matter would be as a landscape design standard. The Mayor inquired whether a memo to the Council would be appropriate, and Mr. Germinario replied that it could be done, but it really should be a Council initiative. Mayor Bieri remarked that the present Council may feel that it would be an infringement on their personal rights. Board member Warren Gross observed that he is aware that in other towns this is a problem since it is very difficult to eliminate. Chairman Garcia suggested that this matter might be referred to the Board's landscape architect, and the Board Secretary noted that Hakim Associates was paid by escrow only and there was no budget established at this time for them to review matters such as these. Mr. Germinario again advised the Board that this is a Council matter.

ORDINANCES REFERRED FROM COUNCIL – None.

BOARD PLANNER'S REPORT

Board Planner Chuck McGroarty provided the following report to the Planning Board on the Affordable Housing/Fair Share Plan (COAH). He advised that the New Jersey Supreme Court had taken COAH out of the process for affordable housing, and that we are currently in the 10 year, 3rd round cycle of the program; it has been 15 years since the last cycle. The courts subsequently hired an expert to prepare a report about the NJ towns affordable housing obligations, but the person who developed the report became ill, and a new report was prepared by another expert. With regard to costs for the Highlands as it related to affordable housing, Mr. McGroarty advised that his fees to prepare the plan will be covered by grants. He reported that COAH is now the jurisdiction of 15 judges in New Jersey, and the judge in the Passaic County vicinage was Judge Brogan. Mr. McGroarty further advised that, in speaking with several legal representatives and the Special Master appointed to us, West Milford appears to be in good shape. An extension was received until the end of March, but overall, the initial numbers are not bad. He suggested that the plan that was adopted in May 2010 may be able to be re-worked and submitted. Our summary was due to the courts by January 12, 2016. He noted that a public hearing may not be needed, but he will attend a conference and inquire if a draft can be submitted. In light of this, Mr. McGroarty requested that the February 4 and 25, 2016 Planning Board meetings be kept open to review the draft affordable housing plan, with March 3, 2016 as a tentative date for the public hearing. He advised that the Township Attorney will be submitting an extension request for the March deadline. Mr. McGroarty cautioned that the Township must stay on schedule and work with the numbers without many guidelines, but it was important to stay on schedule or risk being subject to a builders remedy, even though we don't have intense development permitted in the highlands preservation area. Warren Gross inquired who had the ultimate jurisdiction in this matter, the Highlands or the courts. Mr. McGroarty reported that the courts had provided a 5 month period of time, and there were certain documents to prepare for submission in that time frame. He noted that the Fair Share Housing Center was challenging the affordable housing obligation numbers, and there was a fundamental disagreement on the numbers provided by them as opposed to the consortium of municipalities, which had their own figures for affordable housing. With regard to the Highlands, he noted that no one has said that the Highlands is irrelevant, and they have assigned a factor to the land area in preservation area towns. The numbers assigned were 98 affordable units, (a range of 87-99) which has not changed, and we have met that obligation. For the next 10 years, 2015 to 2025, 35 affordable units are required, and West Milford has met the obligation for the 35 units. The other report under dispute had a required number of 408 affordable units, indicating a major discrepancy between the two different reports, and disagreement on the actual obligation numbers.

Mr. McGroarty advised the Board that although West Milford is entirely in the Highlands, we cannot say that we don't have an affordable housing obligation. In consideration of rehabilitation numbers, the units have to have major system upgrades, at a cost of \$8,000, which may be difficult to meet. Towns that use the rehabilitation route may have to bond in the event of a shortfall, since Passaic County does not provide funds to endorse the rehabilitation of units as they do in Morris County. Board member Glenn Wenzel inquired whether West Milford was only required to provide the zoning for affordable housing, and Mr. McGroarty responded that the zoning was important, but not the whole story. Even though it was done in the past, it did not apply from the 2000 census on. He further advised that towns have challenged the affordable housing obligations, but the response is that no one was forcing them to submit for substantive certification, etc., but the town then becomes vulnerable for a builders remedy. Warren Gross inquired whether there were disgruntled landowners who cannot develop who combined their properties to be used for COAH, and Mr. McGroarty stated that what he was referring to was a "builders remedy", and if we lose the protection of a [certified housing plan], we could be subject to this happening. He further advised that the constitutional obligation for affordable housing exists, but under the Highlands, with the restrictive policies in place, a determination must be made how to resolve the conflict of the restrictions with providing the required number of affordable housing units. Mr. McGroarty reported that he is working on a matrix at the current time which will be sent to the Township Attorney's office and sent to the Special Master to review. He will be in touch with the Board as to the meetings that must be reserved for this matter. Once the judge has determined that the draft is acceptable, then the Board can work on producing the final version. If the judge wants only the approved plan, then a public hearing will have to be held and the plan adopted quickly. He will provide a draft version of the affordable housing plan for the next meeting in February for the Board to review.

BOARD ATTORNEY'S REPORT – None.

BOARD ENGINEER'S REPORT – None.

MISCELLANEOUS

Approval of Invoices

The Invoices from the Planning Board professionals were **unanimously approved** on a **motion** by Andrew Gargano with a **second** by Steven Castronova.

MINUTES

The Minutes from the Planning Board regular meetings of November and December, 2015 would be made available for approval at the next Planning Board meeting.

CORRESPONDENCE

The following correspondence was reviewed by the Board:

Highlands Water Protection And Planning Act Correspondence

1. None.

NJ Department of Environmental Protection Correspondence

1. Notification from McKittrick Engineering, dated December 10, 2015, advising that an application for a Statewide General Permit is being submitted to the NJDEP regarding the installation of a new septic in a wetlands transition area at 74 Maple road, Block 10401; Lot 5.

2. No Further Action Letter, dated December 22, 2015, received from the NJDEP, regarding the removal of a 550 Gal #2 heating oil UGST at Block 15302; Lot 6, 16 Dongan Lane.

3. No Further Action Letter, dated December 22, 2015, received from the NJDEP, regarding the removal of a 550 Gal #2 heating oil UGST at Block 303; Lot 3, 4 Brook Road.

4. No Further Action Letter, dated December 16, 2015, received from the NJDEP, regarding the removal of a 550 Gal #2 heating oil UGST at 4 Finderne Court, Block 1203; Lot 2.

5. Freshwater Wetlands GP No. 10 and Water Quality Certification Modification and Extension, dated December 14, 2015, received from the NJDEP for replacement of the County Bridge #1400-323 – Cozy Lake Road.

Miscellaneous Correspondence Received/Sent

1. Hudson Essex Passaic Soil Conservation Certification of the soil erosion and sediment control plan for the Greenwood Lake Marina Boat Storage, Greenwood Lake Tpk, Hewitt, Block 3610; Lot 30, owner 538 Lakeside Road LLC.

ADJOURNMENT

With no other matters to be brought before the Planning Board, Chairman Garcia **adjourned** the Regular meeting of January 7, 2016 at **8:46 p.m.** on a **motion** made by Mayor Bettina Bieri and a **second** by Douglas Ott.

Approved: May 26, 2016

Respectfully submitted by,

Tonya E. Cubby, Secretary