

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

MINUTES

February 27, 2014

Regular Meeting

Chairman Geoffrey Syme opened the February 27, 2014 Regular Meeting of the West Milford Planning Board at **7:35 p.m.** with a reading of the Legal Notice, followed by the Pledge of Allegiance and Roll Call.

ROLL CALL

Present: Mayor Bettina Bieri, Linda Connolly, Christopher Garcia, Andrew Gargano, Robert Nolan, Councilman Luciano Signorino, Glenn Wenzel, Alternate Steven Castronova, Chairman Geoffrey Syme, Board Attorney Thomas Germinario, Board Engineer John Hansen.

Absent: Douglas Ott, Michael Siesta, Board Planner Charles McGroarty.

Chairman Geoffrey Syme advised that Board Planner Charles McGroarty was excused from attending this meeting and requested Steven Castronova to sit in for Douglas Ott. The Chairman advised that a quorum was present for this meeting.

PUBLIC PORTION

Chairman Syme opened the Public Portion of the meeting. With no one wishing to address the Board, the Public Portion was **closed** on a **motion** by Andrew Gargano and a **second** by Christopher Garcia.

PRESENTATIONS - None.

APPLICATIONS

CARRIED 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 testimony commencing on this application, Board Member Glenn Wenzel announced that he is recused from this matter.

Chairman Geoffrey Syme advised that the initial hearing for the application for John Aiello regarding a Major Soil Removal/Fill Permit had been held on December 5, 2013, and this was a continuation of that hearing. Anthony Fiorello, attorney for the Applicant, advised that he was representing Mr. Aiello, although he was not present at the initial hearing. He reviewed the sequence of events that led to Mr. Aiello filing an application for this major soil removal/fill permit. He stated that Mr. Aiello had received fill from Passaic County for his property on East Shore Road after he made an application and received approval to move the soil. After he filled in areas of his property, the NJDEP inspected the site and determined that Mr. Aiello had filled in wetlands. Following negotiations with the NJDEP, an agreement was reached to mitigate the site with a deadline of May 2014. Mr. Aiello had plans prepared by his engineers, Eid and Lapatka.

Richard Reiss, 813 East Shore Road, was then sworn in to testify for the Applicant. Mr. Reiss stated that he had been employed in the trucking industry for over 40 years and was contracted by Mr. Aiello to move the soil at his property. With regard to considering the option of moving all the soil off of Mr. Aiello's site, Mr. Reiss testified that there are approximately 4600 yards of soil to be moved, or 350 truckloads, and the cost would be approximately \$120,000. Mr. Reiss stated that the soil would have to be moved to an approved dump site and documentation has to be provided that the soil is "clean," as well as proof of the source of the soil and verification where it was taken if disposed in an approved dumping site. He noted that the nearest site to move the soil is north of Monroe, NY. Mr. Fiorello addressed the Board and emphasized that from the testimony by Mr. Reiss, the cost factor to truck the soil off Mr. Aiello's property would be prohibitive, so this would not be an option.

Paul Lapatka, P.E., testifying as an expert witness for the Applicant, reviewed the plans for the soil movement at 828 East Shore Road, noting that the original plan was to place the soil to the west of the existing residence along the edge of a wooded area, indicating this on Sheet 1 of 5, dated 12-31-13. The plan was revised, dated 02-10-14, based on the prior hearing and the comments from the Board Engineer in a report to the Board. Following a subsequent meeting with the Board Engineer, an Alternate Plan B was developed, but it was noted that this was not the plan that was approved by the NJDEP. Mr. Fiorello inquired about the concerns for road drainage and referred to page 2 of the current proposed plan, which was similar to the first plan, with amendments, and Mr. Lapatka referred to the shaded areas that indicated moving approximately 4300 yards of soil, with 233 yards moved off site. He further reviewed the revised plan, noting that it reduces the slope from 4 to 1,

lessening the slope by half, but it moved the soil closer to Lot 7 and Lot 3, so a berm will be installed near Lot 3 for stabilization, with stone, soil and grass. With regard to the water flow, Mr. Lapatka testified that the water would be diverted to the southwest and north, away from the surrounding properties, substantially reducing the flow and volume. Responding to Mr. Fiorello's inquiry about any increase to the volume of water draining to Phillips Avenue, Mr. Lapatka advised that the flow would not increase with this plan. Mr. Lapatka continued with his review of the plan, noting that the soil would be moved from the wetlands area and a berm and slope would be created that would consist of grasses, crown vetch, and tress for stabilization, as well as to reduce the time of concentration and absorb the volume. He advised that the Alternate Plan B was developed through a meeting with the Board Engineer, and it would eliminate berms and slopes, but Mr. Aiello indicated that after speaking to the NJDEP, this plan would not be accepted by them. Mr. Lapatka noted that this was the preferred plan, and it would create a lawn area in the front of the residence, but it depended on the classification of the stream and the buffers associated with this, adding that the subject site was a complicated site to work with. Mr. Fiorello advised that if the Board approved the Alternate B Plan, and the DEP did not accept it, the Applicant would have to return to the Board. He compared the two plans that were being presented to the Board, clarifying that the revised Plan A would require fill being placed within 7 to 10 feet of the neighboring property, and the ordinance requires fill no closer than 100 feet. Due to the geographical and topographical constraints of the site, and without the construction of a 10-foot high retaining wall, the fill will have to be placed near the property line. Alternate Plan B will require NJDEP approval as a condition of the major soil movement permit.

Chairman Geoffrey Syme inquired if the plans presented to the Board were approved by the NJDEP, and Mr. Lapatka responded that the plans were not approved for the wetlands area, but the DEP approved the plans for the location of the soil. Mr. Fiorello advised that the Applicant has indicated that Plan A was approved for the location of the soil. Chairman Syme inquired what was needed to meet the May deadline, and Mr. Fiorello replied that the soil had to be moved by May, adding that he hoped the NJDEP will find that the Applicant acted in good faith trying to get the major soil movement permit approved by the Board. Board Member Robert Nolan inquired whether the Applicant could move the soil to another location as a mitigation project. Mr. Aiello, having been sworn in to testify at a prior hearing, addressed the Board and advised that his wetlands expert, Vince Agrivino, explored the possibility of moving the soil to another location, but determined that it was not feasible. Mr. Lapatka stated that he has been involved in cases where the soil could be moved to another location, but there were many factors to be considered including slopes, soil, topography, etc., and a similar site could not be found.

Board Member Andrew Gargano inquired how long the new soil had been at the site, and Mr. Aiello responded that he moved the soil to the site in 2007, noting that the calculations for the amount of soil were approximate. He reviewed the events that led to the soil estimation, advising that upon receiving the violation from the NJDEP, several attempts were made to find a resolution through a mediation committee. An investigation was conducted as to the actual wetlands location, which, according to Mr. Aiello, could not be verified when DEP representatives were at the site. He stated that the maps do not indicate that wetlands existed at the site, but he was urged to reach a settlement agreement after the DEP refused his offer for a cash settlement. With regard to Plan B, Mr. Aiello stated that he would prefer Plan B since it would be easier to complete, so he requested that the Board consider approving it subject to the DEP approval. If the DEP does not approve Plan B, Mr. Aiello requested approval of the revised Plan A. He testified that he had spent more than \$25,000. in engineering costs since December, not including the construction work that is proposed. Mr. Fiorella clarified that Mr. Aiello was seeking approval of Plan B, subject to the NJDEP approval, and if the DEP does not approve that plan, that the Board approve Plan A. Mr. Aiello advised the Board that they could be confident that the HEPSCD will inspect the site to make sure that it complies with the approved plan, and that all soil movement is specifically under their jurisdiction.

Councilman Lou Signorino inquired about the approval that Mr. Aiello said that he received to move the soil onto his property, and questioned whether it was Township employees who gave him approval. Mr. Aiello stated that there was a map and he was told where he could put the soil. When Councilman Signorino inquired how Mr. Aiello ended up before the Planning Board, Mr. Aiello stated that he had spread manure on his property and a complaint was filed, resulting in an inspection from the local Health Dept., which led to the NJDEP being contacted and violations issued. Mr. Aiello noted, though, that he did not receive fines as a result of the violations. Mayor Bieri commented that 4600 yards of soil does not just come into the Township without approval, and she requested clarification on the events that led to this permit application. Mr. Aiello responded that he does not know how much soil was brought to his property, but that an engineer gave approval for the soil fill. Mr. Fiorello clarified that Mr. Aiello moved an unknown amount of soil to his property to an area that was purportedly wetlands. Mayor Bieri requested the documents that Mr. Aiello received providing approval from the Township, as well as clarification on the existence of wetlands. Mr. Lapatka advised that an L.O.I. (Letter of Interpretation) was not done and that an agreement was reached between Mr. Aiello and the DEP to move the soil rather than apply for an L.O.I. When Mayor Bieri inquired if wetlands could be created in another area, Mr. Lapatka responded that the DEP would not be inclined to take natural wetlands and move them to another area that is not a wetlands, and if they did approve it, this would be very time consuming and require a special permit. Board Member Steven Castronova inquired if there were wetlands to wetlands mitigation plans for this matter, and Mr. Lapatka replied that there are, but it would be expensive and the plan may not get approved, adding that Mr. Aiello brought his firm a sketch of the soil location that the DEP requested and the plans were designed around this.

Mr. Fiorello clarified with Mr. Aiello the site where the DEP wanted the soil to be moved, and Mr. Aiello confirmed, per the signed agreement, the area indicated in Plan A was where the wetlands had to be created. He noted that the agreement was subject to the Planning Board approval, and if the project was not done by May, he could tell them that he did his due diligence with this application, but he could not confirm whether or not he would get an extension from DEP. Board Member Linda Connolly requested clarification about the ditch that was shown on the plans, and Stephen Eid, P.E., P.L.S., who had been previously sworn in, testified that when the topography was re-done at the request of the Board, the grass swales were intermittently wet, and the DEP will require a Transition Area Waiver which would take several months to get approved. John Hansen, Board Engineer, advised that his office issued a letter dated February 24, 2014 following a review of both Plan A and Plan B. He met with the Applicant's engineer and encouraged them to move the soil to a developed area that has proper drainage. Unfortunately, Mr. Hansen observed, the Applicant's professionals did not address the wetlands on the plan; if they had, the Board could approve Plan B. He reported that there was more tree removal with Plan A, but there would be a more effective soil erosion plan if grasses, trees and shrubs are retained. Mr. Hansen expressed that Plan B was the preferred plan since there was less tree and soil removal, and suggested that the Board, under guidance of the Board Attorney, give a flexible approval with conditions. Mr. Aiello emphasized his thorough responses to environmental issues he has had with other properties that he owns in the Township. With regard to Plan B, Mr. Lapatka testified that it was 95% complete, and he could provide the drainage calculations to the Board Engineer for approval. Board Attorney Thomas Germinario advised the Board that they could approve Plan B subject to the approval by the Board Engineer and the DEP for the drainage calculations, and if the conditions were not met, Plan A would be the approved plan. He further advised that his review of the agreement between the NJDEP and Mr. Aiello does not specify or approve the placement of fill in any specific location. He noted that one of the exhibits was not attached as reflected in the agreement. Mr. Lapatka advised that there was a plan attached to the agreement that he did not bring to this meeting, but he assured the Board that there was an approved plan by the NJDEP. Mr. Germinario suggested that the Board could approve the Plan B subject to DEP and the Board Engineer's approvals, and barring that, Plan A would be the approved plan. If the conditions were not met, the Applicant could return to the Board.

Mr. Lapatka advised the Board that the NJDEP agrees with Plan A, and prefers that plan since it is further away from any wetlands, but a waiver from the Board would be required since the soil will be moved closer than 100 feet to a contiguous property. Mr. Lapatka noted that the plans would have to be submitted and it may take 6 months to get approval from the DEP. Mr. Aiello interjected that the agreement states "subject to the weather and Planning Board approval." He requested that the Board Engineer contact the DEP to "encourage" them to approve Plan B, but the Board Members concurred that this would not be advisable. Councilman Signorino inquired if there were other means the Board would have to help move this forward to get the project completed.

Chairman Syme opened the hearing to the public and the following addressed the Board:
Doris Aaronson, Bearfort Road, commented that most of the competent NJDEP officials were "down the Shore dealing with Hurricane Sandy issues."

With no further comments from the public, the public portion of the hearing was closed by Chairman Syme.

Ms. Connolly asked for further clarification on the plan. Mr. Hansen advised that the NJDEP does not specify what trees and vegetation need to be replanted, but once it is verified that wetlands have been filled in, they require the formulation of a plan that receives local approval before they approve the plan. Mr. Lapatka noted that to estimate the amount of fill, they used the original grades, but the DEP did not approve the numbers, and a plan for terracing and wetlands creation was developed, minus the subsurface conditions that previously existed. Board Member Andrew Gargano commented that the Applicant needed a plan approved that he could go to the DEP with, and it is apparent that he had done his due diligence by returning to the Board with a feasible plan. Mr. Gargano made a motion that the Planning Board should approve Plan B or Plan A, and suggested that the Board move on this matter. Mr. Germinario added that the Board could approve the motion subject to the DEP, Soil Conservation, and the Board Engineer's approval, and if Plan B is not approved, Plan A will be utilized. Mr. Hansen said that following the processing of these approvals, a performance bond will be posted, and inspections will be done during and after the construction. Mr. Aiello commented that he preferred that the Soil Conservation District perform all the inspections since it was within their jurisdiction, and it was less expensive for him, but Mr. Germinario advised that the Board Engineer would do what the Township ordinance requires him to do, and all inspections will compliment, not duplicate, the inspections by Soil Conservation. In addition to the approval of Plan B and Plan A, Mr. Germinario noted that the Board would grant a waiver to place the soil closer to the neighboring property line.

Mayor Bieri attempted to clarify the circumstances that led to the filing for the Major Soil Removal/Fill Permit, noting that the NJDEP is requiring the wetlands to be restored, but Mr. Aiello could not determine the quantity of the soil that was moved, and she inquired whether a pre-existing conditions plan was submitted. Mayor Bieri also questioned the requirement that the Applicant replace 4600 yards of soil when there may have only been 46 yards of soil moved. Mr. Aiello responded that the wetlands could not be proved or disproved, but in addition to the soil, truckloads of manure were brought to the site and incorporated with the soil, so the actual amount of soil could

not be determined. Mr. Lapatka explained that the estimate for 4600 yards of soil was determined from the contours of a plan that was prepared several years ago, along with mapping and accurate topography studies completed by his partner and Land Surveyor, Steve Eid.

Mr. Gargano restated his **motion**, with a **second** by Councilman Lou Signorino, for a Major Soil Removal/Fill Permit for John Aiello, Block 4402; Lot 1, 828 East Shore Road, approving Plan B or Plan A, subject to DEP, HEPSCD, and Board Engineer approvals, with a waiver for placing soil closer to the neighboring property than what is permitted by ordinance. Mr. Germinario advised that the resolution should be ready for the March 27, 2014 meeting, although he will not be present for the memorialization.

Roll Call:

Yes: Mayor Bettina Bieri, Linda Connolly, Christopher Garcia, Andrew Gargano, Robert Nolan, Councilman Luciano Signorino, Steven Castronova, Chairman Geoffrey Syme.

No: None.

Motion approved.

NEW BUSINESS -

Escrow Fee Increase – With regard to the memo received from Board Planner, Chuck McGroarty, dated February 24, 2014, advising that amendments could be considered for several of the development application and escrow fees, the Board directed the Secretary to send a memo to the Zoning Board of Adjustment and request that they provide a response following a review of the proposed changes and the comments by Mr. McGroarty.

Public Comment Policy – Chairman Syme advised that the policy for public comments at Planning Board meetings has been amended due to residents repeatedly providing testimony on pending matters without the Applicants being present. Therefore, Chairman Syme advised, the Planning Board will not accept comments or testimony on any matter that is a pending application, and all comments must be held to the hearing when the Applicant is present.

ORDINANCES FOR INTRODUCTION – None.

ORDINANCES REFERRED FROM COUNCIL - None.

BOARD PLANNER’S REPORT – None.

BOARD ATTORNEY’S REPORT – Board Attorney Thomas Germinario reported that he received an email from the Board’s hydrogeologist, Matt Mulhall, regarding the commencement of the aquifer testing, and he was advised that several of the neighboring residents were monitoring their wells. Mr. Germinario also advised that he had spoken to Francis Regan, attorney for Braemar at West Milford, and Mr. Regan informed him that the Applicant was preparing to request an extension of their Final Subdivision approval due to extreme weather events that delayed the completion of the required aquifer testing so they could comply with the conditions of the approval.

BOARD ENGINEER’S REPORT – John Hansen reported that the Sun Young Joo Major Soil Removal/Fill Permit project had been underway and they had their soil erosion controls in place before they had to halt due to the winter weather conditions.

MISCELLANEOUS

Approval Of Invoices – Board Professionals

The invoices submitted by the Planning Board professionals for services performed during the months of December 2013 and January 2014 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 December 5, 2013 Regular Meeting of the West Milford Planning Board by Robert Nolan with a **second** by Steven Castronova. The minutes were **unanimously approved** by those who were present at the meeting.

Motion was made to **approve** the minutes from the January 9, 2014 Reorganization Meeting of the West Milford Planning Board by Mayor Bettina Bieri with a **second** by Christopher Garcia. Board Members Andrew Gargano and Robert Nolan abstained from voting. The minutes were **unanimously approved** by those who were present at the meeting.

The following correspondence was reviewed by the Planning Board and filed:

Highlands Water Protection And Planning Act – None.

NJ Department of Environmental Protection Correspondence

1. Notice of a Treatment Works Permit Approval #13-0383, dated January 24, 2014, from the NJDEP regarding the construction and operation of a subsurface wastewater disposal system to serve the existing Bubbling Springs Park, Macopin Road, West Milford, with an expiration date of 01-16-2016.

2. Notice dated January 20, 2014 of an updated Receptor Evaluation Form being submitted by LAN Associates to the NJDEP for the Village Garage, 101 Otterhole Road, PI #010167, Case Tracking # 00-01-27-1626-04, regarding site remediation.
3. Notification dated January 16, 2014 received from MAP Engineering regarding the submission of a GP#25 application to the NJDEP for Block 7902; Lot 1, 1990 Macopin Road, for an alteration to a malfunctioning individual subsurface septic system in a Freshwater Wetlands Transition Area.
5. Notification and copy of a Groundwater Remedial Investigation Report submitted to the NJDEP by LAN Associates, dated January 6, 2014, for the West Milford Board of Education Bus Depot, 51 Highlander Drive, Block 20203; Lot 13, PI #031446, Case Tracking #98-07-31-1457-31, regarding site remediation for the contamination of groundwater and soil following the removal in 1998 of one 6,000 gal gasoline UST and one 10,000 gal diesel UST. Areas of concern are groundwater, surface water, and wetlands; contaminants of concern are BTEX, PCE, Napthalene.
6. Notification dated January 9, 2014 from the NJDEP advising that the Class B Recycling Center General Approval was renewed for Skytop Recycling, Inc., 80 Airport Road, Block 6002; Lot 34, effective January 9, 2014 to January 1, 2019.

Correspondence

1. Notice from Sustainable Jersey advising that the Township of West Milford's Sustainable Jersey Certification will expire on December 31, 2014, and to avoid a lapse in certification, application for re-certification must be submitted by June 8, 2014. Information for free Webinars on re-certification process to take place on Jan 28 & 30, 2014, as well as an outline of the June 2014 Certification Cycle was provided.
2. Certification of the Soil Erosion and Sediment Control Plan, dated January 14, 2014, received from the Hudson Essex Passaic Soil Conservation District for the proposed Camp Hope Swimming Pool and Spray Park at 1792 Union Valley Road, Block 6402; Lot 4.
3. Notification received February 2, 2014 from the Borough of Ringwood of Ordinance #2014-1 to amend and supplement the revised general ordinances of the Borough of Ringwood by adding Chapter XLI entitled "Highlands Area Exemption" to regulate the manner in which the Borough may approve applications that are exempt from Highlands regulations.
4. Notice from the Passaic County Planning Board, dated January 27, 2014, regarding Twins Realty Group, Block 3906; Lots 9 & 10 and Block 6002; Lot 34.01, 937 Burnt Meadow Road, advising that revised plans indicating and labeling the flood plain line on the site plan and grading plan must be received before the plan will be considered for unconditional approval.
5. Copy of the New Jersey Comprehensive Statewide Historic Preservation Plan 2013-2019, received February 19, 2014 from the NJDEP Historic Preservation Office.
6. Copy of the Draft Passaic County Parks, Recreation and Open Space Master Plan received on February 21, 2014, with correspondence from the Passaic County Planning Dept. advising that a public hearing will be held on this matter on March 20, 2014 at 5:00 pm at the Passaic County Planning Dept., with all comments to be submitted by April 19, 2014.

ADJOURNMENT

- Prior to adjourning, the Board Secretary advised that the Township had announced the Volunteer of the Year Award program and that all the Boards, Committees, and Commissions had received Volunteer of the Year nomination forms to provide an opportunity to submit a nomination.
- The Board Secretary advised of a program sponsored by ANJEC regarding Stormwater Management and Regulation: Municipal Official Training to be held on March 22, 2014 in Morris Township.
- With regard to the Planning Board's attempt to ascertain the status of the West Milford Shop Rite/Inserra project, the Board Secretary advised that she attempted to contact their attorney John Wyciskala, with a copy to Bill Hamilton of Omland Engineering, via email in January, and did not receive a response. Mayor Bieri requested contact information for the attorney as well as Inserra, and noted that she would try to reach out to them.

Chairman Syme then advised that the Planning Board meeting scheduled for March 6, 2014 would be **cancelled**. With no further business to come before the Planning Board, Chairman Syme **adjourned** the Regular Meeting of February 27, 2014 at **9:12 p.m.** on a **motion** made by Robert Nolan with a **second** by Christopher Garcia.

Approved: May 1, 2014

Respectfully submitted by,

Tonya E. Cubby, Secretary