

**TOWNSHIP OF WEST MILFORD  
PLANNING BOARD**

**MINUTES**

**March 24, 2016**

**Regular Meeting**

Chairman Christopher Garcia opened the March 24, 2016 Regular Meeting of the West Milford Planning Board at **7:34 p.m.** with a reading of the Legal Notice, followed by the Pledge of Allegiance.

**ROLL CALL**

**Present:** Steven Castronova, Andrew Gargano, Warren Gross, Douglas Ott, Edward Rosone, Geoffrey Syme, Chairman Christopher Garcia, Board Attorney Thomas Germinario, Board Engineer Paul Ferriero, Board Planner Chuck McGroarty.

**Absent:** Mayor Bettina Bieri, Linda Connolly, Councilman Lou Signorino, Glenn Wenzel.

Chairman Garcia requested Alternates Steven Castronova and Edward Rosone to sit on the Board for two of the absent Board members, and he advised that a quorum was present to hold this meeting.

**PUBLIC PORTION**

Chairman Garcia opened the meeting for public comment. With no one present wishing to address the Planning Board, the public portion was **closed** by unanimous vote on a **motion** by Andrew Gargano, with a **second** by Geoffrey Syme.

**APPLICATIONS**

**NEW APPLICATIONS**

**TIMOTHY KEARNEY** (*Carried from 02/25/16*)

**Major Soil Removal/Fill Permit #PB-12-15-03**

Block 16801; Lot 6

67 Greendale Drive; R-4 Zone

**Seeking:** Major Soil Removal/Fill Permit approval for previously importing 1,443 cubic yards of fill material to “create a more usable level rear yard” on a residential lot containing a single-family dwelling.

Timothy Kearney, Applicant and owner of the subject property, was present to address the Planning Board regarding his major soil removal/fill permit application, advising the Board that he had been a resident of West Milford for over 20 years, residing at 67 Greendale Drive. He reviewed the circumstances that brought him to the Board, testifying that he was offered free fill to level his rear yard, and during the process of receiving the fill, he received a violation notice from the Zoning Officer for importing over 500 yards of soil without a permit. Mr. Kearney was advised that he required the services of an engineer to prepare plans for filing a major soil removal/fill permit, and subsequently hired Houser Engineering to prepare the plans and represent him in this matter.

Tyler VanderValk, P.E., of Houser Engineering LLC, qualified himself for the Board, advising that he had been a licensed engineer in the State of New Jersey for 7 years, received a BA in Civil Engineering, was employed by Houser Engineering, and has provided testimony before this Board on other matters. With no questions from the Board regarding his qualifications, Mr. VanderValk proceeded with testimony on the Kearney major soil movement permit, advising the Board that the Applicant was seeking approval for previously placing fill on the rear of his property at 67 Greendale Drive (Block 16801; Lot 6) which is located in the R-4 Zone. Since the soil movement activity had already been conducted on the premises, and they did not have a topographical map of the pre-existing conditions, the engineers had to develop a rationale for determining the amount of soil that had been imported to the site, as well as estimating the limit of disturbance and the pre-existing slope. He testified that a survey was performed post fill, and a conservative estimate revealed approximately 1400 cubic yards of fill was brought to the site. Calculations were taken from the rear of the Applicant’s driveway to the bottom of the steep slope. Mr. VanderValk testified that he received the recommendations of the Board professionals, and would make revisions to the plans after he received additional comments from the Board and their professionals at this hearing. Mr. Germinario inquired whether Mr. Vandervalk required clarification of the Board Engineer’s report, and Mr. VanderValk requested a review of the checklist waivers that the Board would need to grant before proceeding. Mr. Germinario observed that Mr. Ferriero reported that none of the waivers would be objectionable to the Board, and Mr. Ferriero commented that proof of service was the only requirement to be confirmed. The Board Secretary confirmed that proof of service had been received and was in Applicant’s file.

Board member Douglas Ott inquired of Mr. VanderValk the type of fill that was brought to the site, and Mr. VanderValk advised that the Applicant would address the certification of the fill. The Applicant, Timothy Kearney, was sworn in by the Board Attorney, and Mr. Kearney provided an account about the origin of the fill that was imported to his site. He testified that the fill came from Wallace Trucking, and it originated from a K. Hovnanian building site in Clifton, NJ, located at 650 Valley Road. He further testified that the majority of the fill was rock, or remnants of the blasted material from the Clifton site. He testified that the contractor also imported soil and rock from a location on Cheshire Lane in Ringwood. Mr. Ott inquired about the soil that was placed on top of the rocks and Board member Andrew Gargano inquired whether it was compressed. Mr. Kearney testified that large machinery was used to compress the soil in October 2015 and that none of the soil has moved or eroded, to date. He noted that several trees were lost in the soil movement activities, and some had fallen during storms that hit the area, so there are stumps under the rocks and soil. Mr. Gargano observed that will be sink holes on the site from the decaying tree trunks. The Board Attorney inquired whether any soil certifications were received from the contractor and Mr. Kearney replied that he did not get any documentation for a soil certification. He testified that the Zoning Officer remarked to him that fill was fill, and that when he called several local landscaping companies, they said that they do not offer soil certifications on fill. Chairman Garcia inquired about the use of the site in Clifton prior to construction, and Mr. VanderValk responded that he did not have that information. Mr. Germinario inquired if there had been any testing of the soil, and Mr. Kearney replied that there didn't appear to be any solvents in the soil, adding that during rain events, there were no odors. Board member Warren Gross commented that he was familiar with the Clifton site and the large amount of rock that had been removed, adding that the blasting was visible from the highway.

Board Engineer Paul Ferriero advised the Applicant that the permit process for large soil movement activities is in place in order to determine the safety of the soil, since slope failure can affect the residents and properties in the Township, and it may be a concern if it fails in the future. He noted that he has witnessed enough documentation for property sales with soil movement activities that can become a significant problem. He stated that "shot rock" is probably clean, but the fact that the soil came from more than one location could be a problem because the Applicant would not want soil that is contaminated. He addressed the Board regarding a letter that the Township should draft to contractors advising them not to give away free fill because, essentially it is never really free. Mr. Kearney concurred, noting that he had spent more than \$10,000. to rectify this matter so far. Mr. Ferriero then advised the Board that they should not make any findings with regard to the soil safety if they approve the soil permit application. Mr. Ott stated that the Township and Board had recently spent 2 years with another property (Maple Ridge) where soil movement activities created major erosions issues which resulted in damage to other properties. Mr. Kearney testified that his negligence was not an excuse, and he takes responsibility for having the soil brought to his property, but he was before the Board to resolve the situation and to do what was right. He added that if he has to complete Phase 2, which would include testing of the soil, it would cost him \$20,000. Mr. Ferriero noted that it was understandable that Mr. Kearney was not aware of the requirements [regarding soil movement activities], but he would address this matter with the Township Administrator about a process to make contractors aware of the regulations.

Mr. Gargano inquired about the forest area behind Mr. Kearney's house, and Mr. Kearney explained that the trees and land are sloped down, then the site becomes elevated before sloping down to Rt. 23, adding that he has 100 feet before the end of his property and any runoff will drain to the rear. Mr. VanderValk testified that there was approximately 1600 acres of forested land at the rear of Mr., Kearney's property, but he did not have information regarding the ownership. One of the Board members commented that it was Newark Watershed property. Chairman Garcia inquired whether there were any waterways near the site that would be threatened by stormwater runoff, and Mr. Ferriero commented that this was one of the reasons for receiving certifications relative to the fill. He added that there were probably no problems, but there could be in the future. Mr. VanderValk referred to a manmade drainage ditch lined with stone to the south of the premises, and noted that the ditch receives drainage from Greendale Drive, but it was not compromised by any of the fill activity. From observations during site visits, in addition to GPS, there appeared to be no wetlands, although there was no official determination. Mr. VanderValk further testified that when he prepared the "reverse grading plan", he included the assumption that the fill was placed up to the edge of the ditch, and there has been no effect on the drainage into the ditch during significant rain events throughout the past several months. Mr. VanderValk provided photos taken in November 2015 for the Board to review; these were identified as Exhibits A1 to A 3, marked sequentially. He indicated the silt fence that had been installed, as well as the rock on the soil, and testified that he was fairly confident of the stabilized nature of the fill. Mr. Kearney advised that a [Soil Erosion and Sediment Control] plan had been submitted to the Hudson Essex Passaic Soil Conservation District and certification had been received and was made part of the application file. Mr. Germinario inquired if there was a wetlands specialist involved in this application, and Mr. VanderValk replied that they did not consult with a wetlands specialist, but his firm is familiar with wetlands sites and have filed applications for wetlands permits and letters of interpretation. Mr. Ferriero offered his opinion that, based on the information available and the aerial photos of

the site, it was unlikely that there were wetlands on Mr. Kearney's property, but he wanted the Applicant's professionals to go on record regarding the possibility of wetlands. Mr. Gargano inquired if their testimony would satisfy the NJDEP, and Mr. Ferriero responded that the Applicant does not have to go to the DEP, but the Board cannot grant any approvals with regard to wetlands. Mr. Kearney testified that he lives on a steep slope and the builder of the development had to import fill to make a plateau to build the houses.

Mr. VanderValk advised the Board that he would prepare a revised plan of sheets 1 and 2. With regard to stabilization, he referred to the photos and stated that there had been no issues with the slope failing in the past 6 months since the project was initiated, and the slope was stabilized with vegetation. Mr. Ferriero stated that the problem was that there was no identification about the kind of fill that was used, although if it was shot rock, it was probably clean. He suggested that his office could perform an inspection of the site, with a follow up in October 2016, and if stabilization was required, the Applicant would be responsible. He added that this would avoid having to perform core samples, etc. Mr. Kearney and his engineer were both agreeable to this. With regard to the Health Dept. comments, Mr. VanderValk stated that it was unlikely that the septic system was under the fill, but he would go out to the site to determine where the field is and include it on the revised plans. Mr. Germinario advised that Mr. VanderValk should confirm that the amount of fill over the septic does not exceed the amount permissible by code. With regard to a shed that may be located over the septic field, Mr. VanderValk will also make a determination as to the exact location of the shed and field and include it on the plans. Mr. Germinario then advised that if there was an excess of fill over the septic that it would be removed, and Mr. Ferriero noted that the Health Dept. must approve the fill depth, etc. Mr. Kearney stated that he has his septic pumped every three years and that it is located five feet from his house, so the field or tanks should not be under the shed. Board member Steven Castronova commented that he spoke with an inspector from the Health Dept. that day and they needed confirmation of the location of potable wells, dry wells, septic, etc.

After addressing the comments in the reports from the Board Engineer and the Health Dept., Mr. VanderValk advised that the Applicant acknowledged that he had made an unfortunate mistake with importing the soil to his property. Mr. Germinario inquired if the Board members had any questions for the Applicant or his professional, and Chairman Garcia inquired about the comments from the WM Environmental Commission. Mr. VanderValk addressed all the items, including: the block and lot #'s on the plans, that there have been no complaints from the neighboring property owners, an attempt was made to compare the two conditions both pre and post soil movement, the soil testing issue was reviewed with the Board, no certification was received from the contractor with regard to the soil, and that there were no retaining walls except those that were present prior to the soil movement activity. Chairman Garcia inquired about the silt fences and stormwater runoff and Mr. Ferriero advised that the silt fences should remain until all the soil has been stabilized, adding that from the photos it appears that the soil is relatively stable, but the final call on this will be [HEPSCD] Soil Conservation who will inspect the site and will issue a compliance letter. Mr. Ott inquired if additional fill would be brought to the site for grass, and Mr. Kearney replied that he wanted to add topsoil for a lawn, but was not sure that he was permitted to. Mr. Ferriero advised that any additional soil brought in would have to be included on the revised plans since it would be merely a continuation of the work that had already been done. He requested the Applicant's engineer to estimate the quantities on the plan and he will make a determination on this matter. Mr. VanderValk agreed to include the current and additional soil amounts for grass on the revised plans. With regard to item #5 on Mr. Ferriero's report, Chairman Garcia inquired if Mr. Ferriero was satisfied with the testimony from the Applicant, and Mr. Ferriero responded that the reason he wanted this matter to remain open for a year was to be able to monitor the site to make sure there were no more issues.

Chairman Garcia opened the meeting to the public and the following addressed the Board: Dennis O'Donnell, 63 Greendale Drive, was sworn in by Mr. Germinario and provided testimony in support of the Applicant. Mr. O'Donnell advised that he lived to the south of the Kearney residence and has lived in the Township of West Milford since 1981, is a retired police officer, and his wife is a retired teacher. He was made aware of the free fill that Mr. Kearney was receiving and he helped to spread the fill, which he observed as being very clean, consisting mainly of rock and red soil. Mr. O'Donnell took several stones for his own landscaping, and was very concerned about making sure that no contaminated soil was brought to the site. He testified that he believed it was a small project that went beyond what it was originally intended to be, and the trucks kept coming and delivering the fill while Mr. Kearney was out of town. He noted the fill did not appear to be contaminated, there was nothing suspicious, nor was there any construction debris in the fill, and it was primarily rocky dirt, containing about 70% rock. He also testified that when the trucks were delivering the soil, they were not permitted to drive on the yard or leach field. With regard to the questions of the shed being situated over the leach field, he did not believe that it was; he noted that the well was located in the front yard. Mr. O'Donnell stated that the Kearney's were good neighbors and they take care of their home. With regard to the culvert which is rock lined, he felt that it was well built and he helps to maintain it by replacing loose rocks and clearing out debris, noting that his property would be affected if the culvert was damaged.

With no one else from the public wishing to address the Board on this matter, the public portion was closed on a **motion** by Andrew Gargano with a **second** by Edward Rosone.

Chairman Garcia inquired if any of the Board members had questions for the Applicant or his professional. Mr. Castronova advised that he had been to the subject site and there did not appear to be any encroachment on the neighboring properties, and that the site looked good. Mr. Germinario reviewed the conditions for the Board prior to a motion for approval of the soil movement permit:

The certification of the fill was not required since there did not appear to be any documentation or information on the fill, and therefore the Board will make no findings with regard to the condition of the soil.

Based on Mr. Ferriero's testimony, the Board will not require any determination regarding the presence or absence of wetlands.

With regard to stabilization, the Applicant will comply with any recommendations for stabilization methods that may be required based on site visits performed by the Township/Board Engineer until October 2016.

The soil movement plan will be revised per the Health Dept. memo and a determination will be made regarding the depth of the fill over the leach field, and if it is over 18" it will be removed, and if the shed is located over the leach field it will be relocated. Potable wells and dry wells will be located and noted on the plans. Mr. Ferriero stated that whatever exists on the site will be shown on the plans.

The silt fence will be reinstalled properly, and the additional top soil for grass planting will be shown on the revised plans. Mr. Germinario advised that all the items included in the Board Engineer's report will be addressed with the revised plans.

With no other comments from the Board, a **motion** was made by Andrew Gargano, with a **second** by Steven Castronova, to **approve** the Major Soil Removal Fill Permit application for Timothy Kearney.

**Roll Call:**

**Yes:** Steven Castronova, Andrew Gargano, Warren Gross, Douglas Ott, Edward Rosone, Geoffrey Syme, Chairman Christopher Garcia.

**No:** None.

**Motion approved.**

**MEMORIALIZATIONS**

**Extension Of Time**

**RESOLUTION NO. 2016 – 08**

**TWINS REALTY GROUP LLC**

**Preliminary and Final Site Plan #PB-03-12-02**

Block 6002; Lot 39.01, Block 3906; Lots 9 & 10

937 & 943 Burnt Meadow Road; LMI Zone

**Seeking:** One Year Extension of Final Site Plan Approval, or until September 27, 2016, for a proposed 5-phase project including the removal of an existing commercial structure, construction of new commercial buildings, and installation of parking areas for an existing pre-cast concrete manufacturing facility.

Board Attorney Thomas Germinario advised the Board that the applicant had received Preliminary and Final Site Plan approval in September 2012, with one time extension granted in December 2014 that had expired in September 2015. He further noted that the applicant was entitled to 2 extensions of site plan approval in accordance with the M.L.U.L. The Board was advised that the applicant had several unexpected delays in moving forward with construction, but would soon be proceeding with the project. Board Member Steven Castronova commented that he was familiar with both the application and the project and was ready to make a motion to approve the time extension.

With no other comments from the Board, a **motion** was made by Steven Castronova, with a **second** by Geoffrey Syme, to **approve** Resolution No. 2016 – 08 granting a one year extension of time of Final Site Plan approval for Twins Realty Group, LLC, until September 27, 2016.

**Roll Call:**

**Yes:** Steven Castronova, Andrew Gargano, Warren Gross, Douglas Ott, Edward Rosone, Geoffrey Syme, Chairman Christopher Garcia.

**No:** None.

**Motion approved.**

**NEW OR ONGOING BUSINESS** – None.

**ORDINANCES FOR INTRODUCTION** – None.

**ORDINANCES REFERRED FROM COUNCIL** – None.

**BOARD PLANNER'S REPORT** – Chuck McGroarty, Board Planner, advised that he would discuss the Affordable Housing matter in Closed Session.

**BOARD ATTORNEY'S REPORT** – None.

**BOARD ENGINEER'S REPORT** – None.

**MISCELLANEOUS**

**Approval of Invoices**

The Invoices from the Planning Board professionals for the month of February 2016 were **unanimously approved** on a **motion** by Steven Castronova with a **second** by Andrew Gargano.

**MINUTES**

The Minutes from the Planning Board regular meeting of February 25, 2016 were **unanimously approved** by all those present at that meeting on a **motion** by Steven Castronova with a **second** by Warren Gross.

*The following correspondence was reviewed by the Board:*

**Highlands Water Protection And Planning Act Correspondence**

**CORRESPONDENCE**

1. Copy of a Highlands Applicability Determination application, dated February 2, 2016, received from Langan Engineering and Environmental Services regarding the Union Valley Road/Marshall Hill Road Utility Improvements for Orange & Rockland Electric.
2. Highlands Exemption #4, Water Quality Management Plan – Consistent, received from the NJDEP, dated Feb 25, 2016 regarding Block 2802; Lot 3, 333 Warwick Tpk., with reference to NY SMSA LP dba Verizon Wireless for a proposed antenna and equipment installation at a telecommunication site.
3. Highlands Preservation Area Exemption Determination, Exemption #11 – Determination: Consistent with Goals of the Highlands, dated April 30, 2014, received March 15, 2016, for the Pequannock Water Treatment Plant Improvements for Block 14102; Lot 1 that includes upgrades to the existing chlorine system and modifications to the existing backwash facility.
4. Highlands Exemption #4, Water Quality Management Plan – Not Addressed, dated March 9, 2016, received for the West Milford Salt Storage Project at Block 6002; Lot 28.01, Lycosky Drive.

**NJ Department of Environmental Protection Correspondence**

1. Notification from McKittrick Engineering, dated February 29, 201, regarding an application being filed with the NJDEP for a GP #25 for the installation of a new septic system in a wetlands transition area at 70 Wayside Road, block 806; Lot 18.
2. Notification from PSE&G, dated February 22, 2016, advising that an application was being made for a Freshwater Wetlands Statewide General Permit #1 in support of the repair, replacement and maintenance of natural gas distribution and transmission mains in public rights of way.
3. Notification from McKittrick Engineering, dated February 29, 201, regarding an application being filed with the NJDEP for a GP #25 for the installation of a new septic system in a wetlands transition area at 33 Elm Street, Block 3502; Lot 1.
4. Response Action Outcome received from Mercury Environmental for 751 Westbrook Road, Block 11106; Lot 2, regarding a sewage spill on the site.
5. Notification from Hatch Mott MacDonald, dated March 10, 2016, advising that the Flood Hazard Area Permit application was being filed for the Pequannock Residuals Treatment Facility at Block 14102; Lot 1.

**Miscellaneous Correspondence Received/Sent**

1. Copy of correspondence from the City of Paterson, Department of Law, dated February 29, 2016 regarding the Great Falls Hydroelectric Project, FERC Project #2814, and the Notice of Intent to File New License Application and Time Extension to File Pre-Application Documents. This project is located on the Passaic River on about 152 acres and includes three generating units. The application also seeks an extension for a pre-application document (PAD), authorize the City of Paterson to utilize the traditional process for re-licensing, and designate the City of Paterson as the Commission's non-federal representatives for the purposes of consultation under

Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

2. Notification from Rutgers-NJ Agricultural Experiment Station regarding the following programs: Glacial Deposits of New Jersey, March 22, 2016 – Oxford, \$250.; Groundwater in Fractured Bedrock (Brunswick Aquifer) March 29, 2016 – New Brunswick, \$250.
3. Notice from the NY/NJ Trail Conference regarding the updated Jersey Highlands Trails Map Set: Central North Region - \$9.95 – www.nynjtc.org.
4. Sustainable Jersey notification of Re-Vamped Municipal Energy Action Webinar on March 16, 2016 1 – 2 pm.
5. Notification from ANJEC regarding Open Space Stewardship Grants in the amount of \$1500. - deadline of April 1, 2015.
6. Notification from Passaic County Planning Department, dated March 3, 2016, advising that the Braemar at West Milford, Greene Valley Estates Major Subdivision was unconditionally approved based on the improvements being installed and shown on the plans submitted, with the required County permitting to be obtained prior to construction.
7. Hudson Essex Passaic Soil Conservation District certification of a soil erosion and sediment control plan for 3.5 years, dated Feb. 22, 2016, received for Lanza, 33 Phillips Road, Block 4403; Lot 3 regarding the construction of a single family dwelling.
8. Hudson Essex Passaic Soil Conservation District re-certification, dated Feb. 24, 2016, for a revised soil erosion and sediment control plan, certified for 3 years, received for Rockland Electric regarding the Union Valley and Marshall Hill Roads electrical project.
9. Correspondence from the Pequannock River Coalition, dated March 12, 2016, advising that the PRC was gradually ceasing operation as an incorporated organization, but will continue to monitor environmental issues through email and Facebook and will be an “ongoing clearing house and focal point for watershed concerns and news.”

### **CLOSED SESSION**

**Motion** by Edward Rosone with a **second** by Geoffrey Syme to **close the meeting to the public at 8:43 p.m.** for the purpose of a Closed Session. Chairman Garcia read the following resolution into the record:

### **RESOLUTION NO. 2016-07**

...Prior to the conclusion of this meeting, the Planning Board of the Township of West Milford shall meet in Executive Session, from which the public shall be excluded, to discuss matters as permitted pursuant to N.J.S.A. 10:4-12. sub-section (s):

(7) Pending or anticipated litigation or contract negotiations other than in subsection b. (4) herein or matters falling within the attorney-client privilege.

- **Affordable Housing – H.E./F.S.P.**

Following Closed Session, the regular meeting commenced at **9:11 p.m.**

### **ADJOURNMENT**

Prior to adjourning, Andrew Gargano inquired whether the Ordinance Committee could propose an ordinance with regard to the Township permitting lot line adjustments in certain instances instead of the more involved process of minor subdivisions. Mr. Germinario advised that some towns provide an administrative process for a lot line adjustment, and if the Ordinance Committee wanted to pursue this, he could speak to the Township Attorney and possibly draft a sample ordinance. He noted that he could get a sample ordinance from another town for review by the Committee. With the Board concurring that the April 7, 2016 meeting should be cancelled, the Chairman advised that the Ordinance Committee would meet at 6:00 pm on April 28, 2016 prior to the Planning Board meeting. The Secretary was requested to reserve the meeting room and also provide the Committee with copies of the Aquifer/Water Supply Ordinance and the sample Lot Line Adjustment ordinance for review.

With no other matters to be brought before the Planning Board, Chairman Garcia **adjourned** the Regular meeting of March 24, 2016 at **9:15 p.m.** on a **motion** made by Warren Gross and a **second** by Geoffrey Syme.

Approved: April 28, 2016

Respectfully submitted by,

Tonya E. Cubby, Secretary