

**TOWNSHIP OF WEST MILFORD  
PLANNING BOARD**

**MINUTES**

**June 26, 2014**

**Regular Meeting**

Chairman Geoffrey Syme opened the June 26, 2014 Regular Meeting of the West Milford Planning Board at **7:30 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, Douglas Ott, Councilman Lou Signorino (7:45), Glenn Wenzel, Chairman Geoffrey Syme, Alternates Michael Siesta and Steven Castronova, Board Attorney Thomas Germinario, Board Engineer John Hansen.

**Absent:** Board Planner Charles McGroarty

Chairman Syme requested Michael Siesta to sit on the Board until Councilman Signorino arrived. He advised that a quorum was present to hold 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** following a **motion** by Andrew Gargano and a **second** by Robert Nolan.

**PRESENTATIONS** – None.

**APPLICATIONS**

**ROBERT & BARBARA SCHMIDT**

**Amended Minor Subdivision & Bulk Variances #PB-04-14-01**

Block 2001; Lots 12.01 & 12.02

11 & 13 Paterson Road; LR Zone

**Granted:** Amended Minor Subdivision and Bulk Variances for correction to previously filed deeds and surveys from a two lot minor subdivision approved by the Planning Board in 2005. Variances requested include Lot Area, Lot Frontage, Lot Width, Principal Building Side Yard Setback, Principal Building Coverage, Accessory Building Side Yard Setback, and Accessory Building Coverage.

James LaSala, Esq., representing the applicants, Robert and Barbara Schmidt, provided a brief overview of the application regarding an amendment to a minor subdivision that had been granted in 2005 by the Planning Board. Mr. LaSala advised that the 2005 application involved two houses on one property, built in the 1950's or earlier, that shared a septic field and well. The subdivision was approved with one house on each lot, with separate septic systems and wells. When the septic plan was approved, and they were preparing the site to remove trees prior to installation, the applicant discovered that the lot line on the survey was inaccurate by 20 feet. Mr. LaSala stated that the lot descriptions were correct but the survey was not correct and the current approved lot line went through the house and the septic system of Lot 12.01. He noted that the permitting process for the well and septic took over eight years, and he hoped that the details of the new amended plan that were submitted would be approved immediately by the Board without the benefit of testimony, although he noted that his client was prepared to provide testimony if the Board desired. With regard to the septic and wells, Mr. LaSala acknowledged that new approvals will be required from the Health Dept. He then requested that the Board accept the reality of the situation and approve the amended plan, noting that this matter could have been settled in court with the neighboring property owner, since it was not the applicant's fault that the lot lines were inaccurate. Thomas Germinario, Board Attorney, advised Mr. LaSala that it was his ruling that testimony be given in this matter, mainly due to the fact that the variances that were approved in 2005 are significantly increased with the amended subdivision plan. He noted that although he did not disagree with Mr. LaSala, the rationale remained the same, and the formality of granting the variances has changed, and therefore, necessitates the applicant's presence and testimony at this hearing. Mr. Germinario referred to Paul Ferriero's report dated June 6, 2014, and advised that according to the report, the plan submitted is sufficient for this hearing. Mr. LaSala stated that he had not reviewed Mr. Ferriero's report, and was provided a copy from the Board. John Hansen, Board Engineer, referred to the revised plan and observed that the Health Dept. would have to confirm the location of the septic systems, and that the deed descriptions would have to match the revised plan. Board Member Glenn Wenzel inquired whether the amended minor subdivision plan would affect any other party except the applicant, and the applicant responded that only the adjacent neighbor with the trees could be affected. No other members of the Planning Board had questions or comments at this time.

Chairman Syme noted that Councilman Lou Signorino was present at the meeting.

The Planning Board Chairman opened the meeting to the public and the following addressed the Board regarding the application for an amended minor subdivision for Robert and Barbara Schmidt:

Brian Cassella, 2 Quinton Road, was sworn in to testify, and stated to the Board that he owned the property next to and behind the applicant's house, and that the house of the applicant is 2 feet off his

property line. Mr. Cassella stated that he lived in his house for 50 years, and that one of the houses that was the subject of this application was originally used as a summer house, and the smaller house was originally a cabana, with new siding, windows, etc. added over the years. Chairman Syme inquired when the house in question was used as a year round residence, and Mr. Cassella stated that it was approximately 10 to 15 years ago, when the new owners started to rent it out. Mr. Germinario inquired whether Mr. Cassella was present in 2005 when the original minor subdivision was before the Planning Board, and Mr. Cassella stated that he was not aware of the application for a minor subdivision of the property. Board member Andrew Gargano inquired where Mr. Cassella's property was located in relation to Mr. Schmidt's property, and Mr. Cassella referenced the plan. He testified that the smaller property had no water, and that a hose was run from the adjacent property to provide water. Mayor Bieri inquired if a water right easement was granted and Mr. Cassella advised that it had. Mr. Germinario identified exhibits C-1 and C-2. Mayor Bieri inquired whether he was notified in 2005 about the minor subdivision of the properties, and Mr. Cassella replied that he may have received the notice, but he only came up in the summer and did not recall receiving notification, although his mother may have received the notice. Mr. Germinario observed that according to Mr. Ferriero's report of June 6, 2014, the property was originally supposed to be 20 feet further to the east, and asked for clarification from the applicant.

Robert Schmidt, Sanctuary Blvd., Riverdale, NJ, was sworn in to testify. Mr. Schmidt advised that notices were mailed to all of the surrounding property owners in 2005. He stated that his house was always 2 feet off of Mr. Cassella's property line, and that this amended minor subdivision did not change that. With regard to the house at Lot 12.02 originally being constructed as a cabana, he testified that the houses are basically the same as when he purchased them in 2003, with one house as a one bedroom dwelling, and the other a two bedroom dwelling. Mr. Germinario clarified that in 2005, the houses were being occupied by tenants. Mr. Cassella stated that over the course of 20 – 30 years, the structure changed, and with a roof added 10 to 15 years, it started to resemble a house. Mr. Schmidt noted that new vinyl siding was installed in 2000. He also testified to the Board that the houses had separate septic tanks but shared a septic field, and when he applied to have a septic installed on the one property, Mr. Cassella alerted him to the discrepancy of the survey. He has a septic that is old on Lot 12.02, but it is operating, and according to the 2005 minor subdivision approval, he is required to install a new well on Lot 12.02. Mr. Schmidt testified that he invested approximately \$7,400. to get the original subdivision approved, and with the amended plans, Health Dept. plans, etc., it was close to \$10,000. He added that the Health Officer had been cooperative and had taken his situation into consideration. Mr. Germinario addressed Mr. Cassella, and observed that it was unfortunate that he had not been at the hearing in 2005 when the application for a minor subdivision was being considered, but this was a pre-existing, non-conforming lot that was made more conforming by the creation of two separate lots. He noted that Mr. Schmidt had spent 9 years trying to comply with the 2005 conditions of approval, and, in all fairness and equity to the applicant, he could not advise the Board to re-consider the decision of the Planning Board from 2005. Mayor Bieri explained to Mr. Cassella that the amended minor subdivision that is before the Board at this meeting does not affect his house or property, and that it was a matter of shifting the lot line on one side of Lot 12.02. Mr. Cassella stated that he was under the impression that this hearing was for the subdivision of two houses on one lot, adding that his quality of life has changed since the two houses were being used year round, with noise from the tenants and garbage strewn on his property. Mr. Schmidt testified that he had a bad tenant who is no longer residing in the house, stressing that he is not a slumlord and takes care of his properties. He noted that when the houses were initially up for sale, he spoke to the Township and determined that a minor subdivision would be needed, which is what he received in 2005. The Board Engineer noted that it was up to the Health Dept. if waivers may be obtained since the houses existed previously. Mr. Schmidt stated that the septic was operational on Lot 12.02, but he may have to install a special system if the current system fails, adding that a hoop system was installed on Lot 12.01. Mr. Gargano requested clarification about the lot sizes, and Mr. Germinario responded that the original subdivision of the two houses from one lot was granted in 2005 based on the Board's finding that two separate lots would be more conforming than having two houses on one lot. The 2005 subdivision conditions required separate wells and septic systems for the two houses. Mr. Schmidt noted that he had made an offer to purchase some of Mr. Cassella's property, but he was not interested. In response to Mr. Cassella's contentions about a possible injustice, Mayor Bieri noted that the property had already been granted a minor subdivision in 2005. Chairman Syme acknowledged that the lots in Upper Greenwood Lake, in general, are very small, non-conforming lots, and this situation is not just restricted to the lots that were the subject of this application.

With no further comments from the public, the public portion of the hearing was **closed** on a **motion** by Michael Siesta and a **second** by Robert Nolan.

Mayor Bieri reiterated that, while she appreciated the concerns of Mr. Cassella, this matter was an amended minor subdivision that previously approved the creation of two separate lots with two separate houses that were in existence at the time of the subdivision, and in good conscience, she could not deny this application. Chairman Syme advised those in attendance that the Board appreciated their input, and although they could not always agree, their comments were welcomed. Board member Linda Connolly requested clarification about the 2005 subdivision, and Mr. Germinario advised that the 2005 Board was faced with the rationale that there were two houses on one lot with a shared well and septic field, but the structures were where they are now. Mayor Bieri observed that the subdivision was a better situation since it would require separate wells and septic for each house/lot. Mr. LaSala

stated that he had nothing more to add and had presented the facts, adding that he was prepared to file an appeal if the Board did not approve the amended minor subdivision. Mayor Bieri inquired whether there would be any disturbance to the neighbors if a new septic system is required for Lot 12.02, and Mr. Schmidt replied that there would not be any disturbance to his neighbor's trees.

**Motion** by Mayor Bettina Bieri with a **second** by Glenn Wenzel to **approve** the Amended Minor Subdivision and Bulk Variances for Block 2001; Lots 12.01 and 12.02, with conditions noted: the Applicant shall obtain Health Department confirmation of the location of the septic on Lot 12.02; lot closure calculations and deeds with metes-and-bounds descriptions shall be submitted for review; the property owner's certificate shall be signed on the plan; minor subdivision deeds and plans shall be reviewed and approved by the Board's Attorney and Engineer prior to filing.

**Roll Call:**

**Yes:** Mayor Bettina Bieri, Linda Connolly, Christopher Garcia, Robert Nolan, Douglas Ott, Glenn Wenzel, Michael Siesta, Chairman Geoffrey Syme.

**No:** Andrew Gargano.

**Motion approved.**

**MEMORIALIZATIONS** – None.

**NEW OR ONGOING BUSINESS** –

**Draft Community Forestry Management Plan** – The Planning Board reviewed the Draft Community Forestry Management Plan referred from Environmental Commission. Doug Ott reminded the Board that this plan was a prerequisite for the larger DEP reforestation grant in the amount of \$620,000. + that the Township received. He further advised that the CFMP defines what will occur with regard to the tree planting and forest management. The Board did not have any issues with the document and recommended that a memo be sent to the Environmental Commission and Township Council stating that they have no objection to the adoption of the plan.

**Draft Sustainable Land Use Pledge** – The Planning Board reviewed the Draft Sustainable Land Use Pledge that was referred from Environmental Commission and Green Team/Sustainable Subcommittee. Following several comments from the Board, Board Attorney Thomas Germinario advised that he was not comfortable with the "pledge" and would need to take a further look at the implications of the document. He generally advises his Boards not to take public stands or make pledges on land use issues, and asked that this matter be postponed until the July 24, 2014 Board meeting until he has further time to review the document.

**Review Draft Trails Master Plan** – The Board Secretary noted that on June 6, 2014, the Planning Board carried the discussion on this document to the July 24, 2014 Planning Board meeting.

**Zoning Board of Adjustment Resolution No. 7-2014 – In The Matter of the Review of Fees and Types of Applications** – The Board referred to the ZBOA resolution that was included in their packets, and they inquired about the purpose of the resolution since the Board of Adjustment had already responded, via memo, to the Planning Board's consideration of increasing fees and change in structure to variances for land use applications. Chairman Syme recalled that the board had authorized their Planner, Chuck McGroarty, to look into an increase in land use application fees in response to several applicants who did not pay the escrow required for the services rendered by the Board's professionals. Mr. Germinario noted that there was nothing in the MLUL that required a resolution from the Board of Adjustment in this matter, adding that the Planning Board has the prerogative to set its fees and the Township would have to adopt an ordinance to raise those fees. The Board concurred that there was no purpose to the resolution and there was no interest in moving forward on this matter. Board member Michael Siesta reiterated that the Planning Board had a long discussion on this matter and the solution was to place a lien on the property of an applicant who refuses to pay the outstanding escrow, adding that there was no need to raise fees and escrow. Chairman Syme inquired whether the Board would have to sue the applicant if there was an escrow shortage and the applicant refused to pay the amount owed, and Mr. Germinario responded in the affirmative, unless there was an exceptional case. He also noted that, typically, before a Board has a hearing on a particular matter, the escrow is replenished or a Board hearing is not held. Board Member Robert Nolan requested a copy of the invoice from the Zoning Board of Adjustment's Attorney for the preparation of Resolution No. 7-2014.

**ORDINANCES FOR INTRODUCTION** – None.

**ORDINANCES REFERRED FROM COUNCIL** - None.

**BOARD PLANNER'S REPORT** – None.

**BOARD ATTORNEY'S REPORT** – Board Attorney Thomas Germinario advised that the Planning Board is nominally a party to a Triple T Construction LLC lawsuit against the Township of West Milford. He noted that the suit primarily relates to recycling and other incidental issues that include the Planning Board's handling of the site plan application. He had nothing new to report at this time

since it is still in the discovery stages, but he noted that the Board would not have a Closed Session to discuss the matter until it becomes necessary.

## **BOARD ENGINEER'S REPORT** – None.

## **MISCELLANEOUS**

### **Approval Of Invoices – Board Professionals**

**Motion** was made by Andrew Gargano with a **second** by Councilman Lou Signorino to **approve** the invoices submitted by the Planning Board professionals for services performed during the months of April and May 2014. The Planning Board **unanimously approved** the invoices for payment.

## **MINUTES**

Consensus by the Board to **table** the approval of the May 1, 2014 regular Planning Board meeting until the July 24, 2014 regular meeting.

## **CLOSED SESSION**

Triple T Construction, LLC; Scott Ridings; Organic Waste Solutions; Organic Waste Systems LLC, Plaintiffs Vs. Township of West Milford; Township of West Milford Planning Board; Nancy Gage; Vincent Lupio; and J. Does 1 – 12, Defendants; Docket No. PAS-L-001119-14.

Board Attorney Tom Germinario advised that a Closed Session on the above matter would not take place at this meeting.

## **CORRESPONDENCE RECEIVED**

*The following correspondence was reviewed and filed:*

### **Highlands Water Protection And Planning Act Correspondence**

1. Notice from Ferriero Engineering, dated May 27, 2014, on behalf of the Township of West Milford, advising of an application for a Highlands Exemption for 30 Lycosky Drive, Block 6002; Lot 28.01.

### **NJ Department of Environmental Protection Correspondence**

1. No Further Action and Covenant Not To Sue notice, dated June 9, 2014, received for 13 Mary Street, Block 11001; Lot 14, regarding the removal of a 550 gallon #2 H.O. UGST.
2. No Further Action and Covenant Not To Sue notice, dated June 12, 2014, received for 37 Oak Drive, Block 16302; Lot 13, regarding the removal of a 550 gallon #2 H.O. UGST.
3. Public Notification and Community Outreach notice, dated June 10, 2014, received from HCI, regarding Adelo Corporation, 2019 Greenwood Lake Tpk, Block 3603; Lot 7, providing an update of the environmental contamination remedial investigation phase, prompted by the presence of volatile organic compounds (VOC's) in the groundwater. Investigation activities completed to date include soil investigation, groundwater investigation of the shallow and intermediate zones, and vapor intrusion investigation of the subject and surrounding properties.
4. Classification Exception Area/Well Restriction Area (CEA/WRA) Fact Sheet, received June 3, 2014, from GES-Groundwater and Environmental Services, dated 04-30-14, regarding the Shell Service Station, Newfoundland, NJ #9527, Block 14604; Lot 1, Case Tracking #95-03-31-1421, 004714.
5. Public Notification and Outreach Notice, dated June 3, 2014, from Applied Service Corp., on behalf of the Bakker Residence, 13 Homestead Rd., Block 2709; Lot 5, regarding investigation and/or clean up of environmental contamination prompted by the presence of chemical constituents associated with gasoline found in the soil and ground water.
6. Request for Access for Potable Well Testing, dated June 4, 2014, received from Applied Service Corp., sent to various property owners, regarding 13 Homestead Road, NJDEP Incident # 14-05-20-1556-20.

### **Miscellaneous Correspondence Received/Sent**

1. HEPSCD certification of soil erosion and sediment control plan, dated May 28, 2014, regarding *Aiello East Shore Wetlands Mitigation: Revised as per Alternate Plan A*, for property at 828 East Shore Road, Block 4402; Lot 1, certifying the plan through August 4, 2014.
2. HEPSCD certification of soil erosion and sediment control plan, dated May 6, 2014, regarding *Lanza Flanders 2 SFD* at 27 & 33 Flanders Road, Blocks 2707 & 2708; Lots 1 & 3, certifying the plan through November 6, 2017.
3. Notice from the Borough of Bloomingdale Planning Board, dated June 6, 2014, regarding a public meeting on Thursday, June 19, 2014 at 7:30 pm to consider the Periodic Re-Examination of the Master Plan relating to the Meer Tract and Tilcon Quarry.
4. Notice of a scheduled Public Hearing from the Town of Tuxedo regarding the Introductory Local Law #2 of 2014 entitled "Gaming Overlay District," which would create a gaming overlay zoning district to allow a gaming facility and related resort development in Tuxedo, NY, to be held on June 23, 2014 at 7:30 pm at the George F. Baker High School, One Tornado Drive, Tuxedo, NY.

5. Notice from the Passaic County Planning Department advising of a Public Hearing on amendments to the Corridor Enhancement Program to be held on July 22, 2014 at the Prospect Park Municipal Building, 106 Brown Avenue, Prospect Park, NJ at 5:30 pm. These amendments, recommended by the Passaic County Planning Board, would extend the corridor program to all County roads.

### **ADJOURNMENT**

Prior to adjourning, Board Member Linda Connolly inquired about the Vreeland Store restaurant/country inn on Macopin Road, which now includes a bar, and several Board members commented that the owner had received use variance approval from the Board of Adjustment to operate the restaurant, and noted that this matter was not within the Planning Board's jurisdiction. The Board Secretary advised that she had researched the matter at the request of the Board, and the required approvals had been granted from both Boards.

With no further business to come before the Planning Board, Chairman Syme **adjourned** the Regular Meeting of June 26, 2014 at **8:48 p.m.** on a **motion** made by Andrew Gargano with a **second** by Councilman Lou Signorino.

Approved: September 4, 2014

Respectfully submitted by,

Tonya E. Cubby, Secretary