

# TOWNSHIP OF WEST MILFORD

## PLANNING BOARD

### Minutes

October 27, 2004

REGULAR MEETING

Chairman, Michael Tfank, called the meeting to order at 7:38 p.m. with the reading of the legal notice.

### ROLL CALL

Present: Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott, Michael Siesta, Kurt Wagner. Alternate: Matthew DeFede. Chairman: Michael Tfank. Board Attorney: Glenn Kienz, Esq. Planning Director: William Drew, P.P. Consulting Engineer: Robert Kirkpatrick, P.E. was represented by Valerie Hrabal.

Absent: Leslie Tallaksen. Alternate: Clinton Smith.

Chairman appointed Mr. DeFede to vote for Ms. Tallaksen.

### PUBLIC PORTION

Robert A. Jones, Esq., Hunziker, Jones, Caserta & Romer, P.A., 155 Route 46 West, Plaza II, Wayne, NJ 07470, representing the Awosting Association, requested an adjournment regarding the recommendation from the Historic Preservation Commission to designate the Awosting Inn an historic site. He advised that the Association is opposed to the designation and needed time to prepare and present their case. By voice vote the Board favored carrying the matter to the December 8, 2004 meeting.

Elaine Young Duffy, 21 Warwick Turnpike, Hewitt, NJ was advised to hold her comments, which pertained to a zone change application listed on the agenda, until the application was presented.

### SITE PLAN WAIVER APPLICATIONS

#### YONG SOON CHOI

#### Site Plan Waiver #0420-0196W

Block 14605; Lot 2

Route 23, HC Zone

Young Soon Choi, 88 Lakeview Avenue, Leonia, NJ, the applicant, and her interpreter, appeared before the Board along with Marco Silvestri, 72 Charcoal Road, Newfoundland, NJ, the property owner. They advised that the applicant wished to open a garden spa. William Drew, Planning Director, noted that it was a permitted use in the zone, that the Lakeland Plaza is well maintained and that there were no concerns or recommendations with regard to the occupancy of this facility.

**MOTION** made by Kurt Wagner, seconded by Edward Orthouse, to approve the waiver request.

On roll call vote: Yes – James O'Bryant, Edward Orthouse, Douglas Ott, Michael Siesta, Kurt Wagner, Michael Tfank

No - Joseph Elcavage, Matthew DeFede

#### Paul Schreiber (Bagel Town Café & Deli)

#### Site Plan Waiver #0420-0195W

Block 7006; Lot 2

1618 Union Valley Road, CC Zone

Paul Schreiber, 1449 Union Valley Road, West Milford; Eugene Berardi, Long Valley, NJ, and Mark Goldberg, Wyckoff, NJ appeared before the Board. They explained they planned to

open a bagel shop in an existing store located in the Bearfort Shopping Center. The store was previously a bagel shop. Mr. Drew advised that the project meets all site plan requirements.

**MOTION** made by Joseph Elcavage, seconded by James O'Bryant, to approve the waiver request.

On roll call vote: Yes – Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott, Michael Siesta, Kurt Wagner, Matthew DeFede, Michael Tfrank  
No - None

## **ZONE CHANGE APPLICATIONS**

### **ZANADO ENTERPRISES**

#### **Zone Change #0450-0176**

Block 6803; Lots 4 and 11

Warwick Turnpike and Union Valley Roads; CC Zone

Request to change existing CC Zone to R-4

Applicant to present additional information and Board to consider recommendation to Township Council.

The applicant was represented by Allen Hantman, Esq., Morris & Hantman, 168 East Main Street, Denville, NJ. and Douglas McKittrick, PE, PP, McKittrick Engineering Associates, Inc., 2024 Macopin Road, West Milford, NJ 07480. Mr. Hantman advised that the application before the Board is to change the entire property to the R-4 Zone; to create four (4) lots; to demolish all the existing dwellings on lot 11; and, to create one new home on lot 11. They were back before the Board to clarify how the environmental constraints impacted this particular property and to show how it could be developed.

Mr. McKittrick explained the environmental constraints associated with the property. He noted that if 300-foot wetlands buffers were required there would be no space for commercial development on the southerly portion of the property. He opined that commercial development was feasible on a portion of the northern property. The Board noted that the impact of the Highlands Legislation could limit development of this parcel to one home.

The meeting was opened to the public and Elaine Duffy, 21 Warwick Turnpike, Hewitt, NJ read a statement requesting the Board consider the welfare of the surrounding residents when making their recommendation. She expressed concern regarding the impact of any development on a sensitive environmental area, the impact of runoff from the mountain on the existing homes and the increased traffic to the area.

Dawn Dilts, 14 Beaver Avenue, West Milford, NJ questioned the purpose of the zone change in light of the Highlands Legislation and requested that no change be permitted.

Ellen Bialkowski, 47 Beaver Avenue, West Milford, NJ expressed concern regarding the impact of development on the environment, the traffic and water. She requested that the Board maintain a rural community.

Steve Englander, President, Greenbrook Homeowners Assoc., objected to the application.

Michele LaPlaca, 7 Greenbrook Drive, West Milford, NJ presented pictures of the property and was concerned with the constant noise and volume of traffic in the area.

As no one else wished to speak a **MOTION** was made by James O'Bryant, seconded by Kurt Wagner, to close the public portion. On voice vote all were in favor.

The Board and the Board Attorney discussed the various procedures for seeking a zone change. The impact of the Highlands Legislation and the reports of the Planning Department were discussed.

Planning Director, William Drew, advised that the Planning Department had reviewed this proposed zone change request and recommended that two additional properties known as Lots 1 and 12; Block 6803 on the Township Tax Maps also be included in this zone change

request from CC Community Commercial to R-4. He noted that the inclusion of these two additional properties were for the purposes of establishing a cohesive zone plan. To change the zoning of the applicant's subject lots, but not include these other two parcels would result in small, remnant properties remaining in the Community Commercial Zone, thereby isolating them from contiguous, commercially-zoned properties.

After discussion James O'Bryant, seconded by Michael Siesta, made a MOTION to forward this application request to the Municipal Council for an introduction of an ordinance.

On roll call vote: Yes – Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott,  
Michael Siesta, Kurt Wagner, Matthew DeFede, Michael Tfrank  
No - None

Recess

## APPLICATIONS

**EUGENE PRAIS** COMPLETE: 07-01-04  
**Preliminary Subdivision #0410-1961** DEADLINE: 10-29-04  
Block 8401; Lots 22 and 23  
114 Dockerty Hollow Road; R-2 Zone  
Create one building lot.

The applicant, Eugene Prais, 245 Awosting Road, Hewitt, NJ requested the Board grant him a time extension on the application in order to resolve some outstanding matters with the DEP. He noted that in order to build an additional home on the lot he needed to obtain a letter of exemption from the Highlands Legislation. He advised that he was working with several people at the DEP as well as Senator Martin's office on obtaining an exemption.

William Drew, Planning Director, advised that the Board bifurcated the application at the last meeting and granted the applicant variance relief on the house currently under construction on the property. This would allow the applicant to complete the house while he pursued the various permits necessary from the Highlands Legislation and the DEP.

The Board opened the meeting to the public for its comments with respect to this application. As there were no members of the public present expressing an interest in this application, the Board closed the public comment portion of this application.

**MOTION** made by James O'Bryant, seconded by Douglas Ott, to grant the applicant a one-year time extension.

On roll call vote: Yes – Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott,  
Michael Siesta, Kurt Wagner, Matthew DeFede, Michael Tfrank  
No - None

**THOMAS & CHRISTINE SCHNEIDER** COMPLETE: 08-04-04  
**Minor Subdivision #0410-1962** DEADLINE: 12-02-04  
**Variance #0430-0676**  
Block 2303; Lots 8 and 10  
23 & 29 Gladstone Road; LR Zone  
Lot line adjustment to eliminate a driveway encroachment.

The Planning Director, William Drew, noted that a letter was received from the applicant advising that he was unable to attend the meeting due to a business trip. The applicant asked the Board to consider the application as presented. Regarding the issue of the shed, the applicant advised that whatever existed on the property prior to him purchasing the home should not have an effect on the application.

After discussion, the Board determined that the applicant should appear at the November 8, 2004 meeting to clarify the issue of the shed. It was suggested that it would be helpful to have the neighbor also appear.

**THOMAS L. SCALA, JR.**  
**Laurel Hollow – Section II**  
**Resolution No. 2004 - 29**  
**Final Subdivision #0410-1925C**  
Block 5006; Lots 10  
Laurel Hollow; R-4 Zone

COMPLETE: 10-22-04  
DEADLINE: 12-06-04

The application before the Board is a request for final subdivision approval for the subject property.

The applicant, Thomas L. Scala, Jr., 203 Stephens Road, West Milford, NJ appeared on his own behalf at the hearing. Also testifying on behalf of the applicant was Alfred A. Stewart, Jr., P.E., L.S., 25 Pine Street, Rockaway, NJ, who provided testimony as an engineering expert.

The Board reviewed the application as well as the plans submitted for this application entitled "Final Subdivision Plat of Laurel Hollow, Section II" prepared by Boyce L. McGeoch, N.J.P.L.S., dated December 17, 2003 with a current revision date of March 18, 2004.

In reviewing this application the Board also considered the report of its Planner, William H. Drew, P.P. dated October 22, 2004. In his report, the Board Planner indicated that the entire tract of the subject property is 44 acres and the application submitted for Section II Final Approval is for the remaining three (3) lots indicated on the final plat as Lot 11, Lot 12 and Lot 13 in Block 5010. The Board Planner indicated in his report that he reviewed the final plat submitted by the applicant and that the applicant had complied with the conditions of the preliminary approval as they apply to this Section II Final Subdivision Application. The Board Planner further indicated in his report that Rockburn Pass is an accepted Township Road and the bonds for same have been released. He further noted that a bond had been posted by the applicant for the entire Laurel Hollow Road and the proposed cul-de-sac. He also noted that a note on the final plat for Section II stated as follows: The temporary cul-de-sac as delineated on the final subdivision plat of Laurel Hollow Section I filed on December 28, 2001 in the Passaic County Register of Deeds Office as Map No. 3479, is hereby deleted.

The Board Planner indicated that the above reference was to a "bulb" that lied to either side of the 50-foot-wide, dedicated right-of-way, which was intended to be extinguished at the time Section II final subdivision was given approval by the Board with the plat being filed with Passaic County. The Board Planner noted that the applicant and/or its professionals needed to advise the Board regarding the status of the temporary cul-de-sac section and advise whether it was created by way of an easement across private Lots 9, 10 and 14 or whether it was a dedicated right-of-way that needed to be vacated by the Township. Clarification of this issue, he noted, would determine the mechanism by which the public rights were extinguished.

Mr. Stewart and the applicant testified that the temporary portions of the cul-de-sac established as part of the Section I final subdivision would be extinguished. This will be accomplished at the time the applicant provides a deed to the Township for the dedication of the Laurel Hollow right-of-way. This will serve as a quitclaim deed extinguishing any rights that may have accrued to the public by virtue of its temporary status. If the Township Council so desires, the applicant would provide meets and bounds descriptions of the area in the deed of dedication. However, it was not believed that this was necessary.

The issue regarding the reduction of the posted Performance Bond and the need to revise the as-built drawings are administrative issues, which will be resolved between the applicant and the Township Engineering Department. Ultimately, the Township Council is the authority to release the Performance Bond once the Township Engineer is satisfied that the work has been completed to required standards.

The applicant agreed to amend the final plat to accurately reflect the date of the deed restriction regarding the direction of stormwater runoff on lots 11 and 12; Block 5010. Also, the applicant agreed to place the obligation for the maintenance of the center of the Laurel Hollow cul-de-sac in the deed for lot 12.

Mr. Scala advised the Board that he had applied to NJDEP for an exemption from the requirements of the Highlands Water Protection and Planning Act. He requested the Board

to grant a time extension to provide the time necessary to receive this exemption. A provision in the Municipal Land Use Law allows for the stay of the time periods of approval when the same is impacted because of delays in obtaining legally required approvals from other governmental entities. This provision is subject to the developer having promptly applied for and diligently pursued these approvals. The applicant had applied for this exemption. The Board agreed to have a stay in the time period until such time as the applicant received his exemption, in which case the time periods as stipulated in the Municipal Land Use Law would begin.

The Board Planner further advised in his report that the applicant had posted a cash performance bond in the amount of \$15,000.00. The Board Planner further advised that the Township Engineer had stated that prior to the release of this performance bond for Laurel Hollow, Section II, the existing as-built survey of Laurel Hollow dated December 10, 2003 needed to be revised to include the following changes: 1. Showing tie to Rockburn Pass intersection; 2. Labeling the Laurel Hollow right-of-way width; 3. Showing the location of the rip-rap apron; 4. Providing edge of pavement elevation every 100 feet; 5. Updating certification that the required monuments are still in place; and 6. Requiring that the as-built drawing be of archival quality (i.e., mylar with permanent quality print not sepia).

The Board Planner further indicated that the plans submitted by the applicant showed the location of wetlands and proposed transition areas that were approved by the NJDEP in 2001. He further noted that the conceptual grading plan submitted by the applicant showed that the subject property would be developed in accordance with the DEP's wetland permit so that no disturbance would be encroaching within wetlands or transition areas.

With respect to Deed restrictions proposed by the applicant for some of the individual lots being created by the subdivision, the Board Planner noted that changes needed to be made to the final plat, which needed to be reflected in the proposed Deed restrictions. In this regard, the Board Planner made recommended language changes to the final plat as well as the proposed Deed restrictions.

With respect to the changes to the final plat language, the Board Planner indicated that the note on the final plat should read as follows: "Proposed hard surface areas, including roofs, decks, driveways and retaining walls on Lots 11 and 12, Block 5010, shall not drain towards Lots 12 and 13, Block 5009 and Lot 17, Block 5001. All drains and leaders from gutters shall be directed towards Laurel Hollow."

With respect to the proposed Deed restriction language, the Board Planner indicated that the following language should be added to the proposed Deeds for Lots 12 and 13 of Block 5009 and Lot 17 of Block 5001: "Clear cutting of trees within 60 feet of the front property line (street line) and 25 feet from the side and rear property lines is prohibited, except as depicted on a site plan approved by the Township of West Milford. Said clearing of trees within the restricted area may include the removal of those necessary for the construction of driveways, septic disposal systems, dwellings, pools, out buildings and the installation of underground utilities. The terms, provisions and covenants contained in this Deed shall be deemed covenants running with the land. The terms, provisions and covenants contained hereon are binding upon the grantee, its successors, heirs, transferees and assigns in perpetuity."

The Board Planner further indicated that the property deed for Lot 12 needed to state that the owner of Lot 12 would maintain the cul-de-sac to be located thereon. He noted that this was a condition of the preliminary subdivision approval, which was to be assigned to the owner of Lot 12 because the Township does not have the staffing to maintain the landscape section within the right-of-way.

The Board Planner further indicated that the Passaic County Planning Board had granted unconditional final approval to the Applicant and that the Hudson-Essex-Passaic Soil Conservation District issued approval for the entirety of the project in March of 2004. The Board Planner lastly indicated that an exemption from the requirements of the Highlands Water Protection and Planning Act had been applied for by the applicant.

In considering this application the Board also reviewed the report of its Board Engineer dated October 22, 2004. Upon reviewing this report with the applicant, the applicant indicated that

he would comply with the terms of both the Board Planner's and Board Engineer's reports as conditions of approval.

The Board opened the meeting to the public for its comments with respect to this application. As there were no members of the public present expressing an interest in this application, the Board closed the public comment portion of this application.

**MOTION** made by James O'Bryant, seconded by Kurt Wagner, to approve the application with conditions as stated by the Board Attorney.

On roll call vote: Yes – Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott,  
Michael Siesta, Kurt Wagner, Matthew DeFede, Michael Tfrank  
No - None

## **MEMORIALIZATIONS**

### **VERIZON NEW JERSEY, INC.**

#### **Resolution No. 2004 -25**

#### **Minor Site Plan #0420-0182**

#### **Variance #0430-0675**

Block 16003; Lots 3 and 4

45 Paradise Road; R-4 Zone

Construction of an emergency generator enclosure and transformer pad.

**APPROVED:** Minor site plan with variances.

**MOTION** made by Joseph Elcavage, seconded by James O'Bryant, to memorialize the resolution.

On roll call vote: Yes – Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott,  
Michael Siesta, Kurt Wagner  
No - None

### **BALD EAGLE COMMONS**

#### **Resolution No. 2004 - 26**

#### **Minor Subdivision #0410-1966**

Block 5308; Lots 2 and 3

Cahill Cross Road; SCC Zone

Reconfigure lot lines for commercial development.

**APPROVED:** Minor subdivision.

**MOTION** made by Joseph Elcavage, seconded by Kurt Wagner, to memorialize the resolution.

On roll call vote: Yes – Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott,  
Michael Siesta, Kurt Wagner  
No - None

### **BALD EAGLE COMMONS**

#### **Resolution No. 2004 - 27**

#### **Amended Preliminary #0420-8815**

#### **Final Site Plan #0420-8815 (Phase III A)**

Block 5308; Lot 3

Cahill Cross Road; SCC Zone

Construction of a single-story commercial building.

**APPROVED:** Amended preliminary site plan and final site plan for Phase III A.

**MOTION** made by James O'Bryant, seconded by Joseph Elcavage, to memorialize the resolution.

On roll call vote: Yes – Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott,  
Michael Siesta, Kurt Wagner  
No - None



## COMMUNICATIONS

The following correspondence was received and filed:

County Planning Board reports to the Planning Board regarding the following application:

Alice Zampella, Final Plat, Block 14601; Lots 5 and 6, Union Valley Road. Final approval granted.

AT&T Wireless (Eastern Propane), Site Plan, Block 16307; Lot 21, 364 Oak Ridge Road. Approval withheld pending receipt of additional information.

AT&T Wireless (Macopin Fire Company), Site Plan, Block 9301; Lots 5 and 6, 1362 Macopin Road. Approved.

Carl Bierwas, Minor Subdivision, Block 8201; Lot 2, 1945 Macopin Road. Approval withheld pending receipt of a Highlands Preservation Area Applicability Determination from the DEP.

Douglas Doyle and Scott Walker, Preliminary Subdivision, Block 101; Lots 21 and 22, Clinton Road. Approval withheld pending receipt of additional information and receipt of Highlands Preservation Area Applicability Determination from the DEP.

Battinelli Farm and Garden Center, Site Plan, Block 3907; Lots 1.01 and 1.02, Greenwood Lake Turnpike. Approval withheld pending receipt of additional information.

Fieldstone Estates, Final Plat, Block 13001; Lots 1 and 2, Macopin Road. Final approval granted.

Letter dated September 28, 2004 from Careaga Engineering, Inc. advising that AdvoServe of New Jersey has submitted a TWA Application for the replacement of septic systems on property located at 240 Longhouse Road; Block 2202; Lot 5.01.

Notice dated September 29, 2004 advising that Phil Luogameno is applying for a General Permit for the installation of a disposal field on property located at 18 Crescent Road; Block 12305; Lot 13.

Letter from the DEP dated September 13, 2004 in response to request of Castle Rock Estates for a Letter of Interpretation for property located on Union Valley Road, Block 9901; Lot 7.

Notice from ANJEC of 31<sup>st</sup> Annual Environmental Congress – Beyond Home Rule: Protecting the Environment Through Regional Planning to be held Friday, October 15, 2004 at Mercer County Community College.

Copy of letter dated September 23, 2004 from Gail Van Hook, Secretary, Historic Preservation Commission to the Awosting Association regarding Commission's recommendation of the Awosting Inn as an historic landmark.

Notice dated October 18, 2004 from Ballester & Associates, Inc. advising that Joseph Bubba is applying for a General Permit for property located at 8 Pinecrest Trail, Block 8509; Lot 15 for the installation of a sub-surface sanitary disposal system.

Letter dated September 8, 2004 from ARCH<sup>2</sup> advising that they are preparing an archaeological assessment for a project involving the construction of a new 60' AT&T Wireless Services, Inc. monopole to be located at 364 Oak Ridge Road.

Letter dated September 8, 2004 from ARCH<sup>2</sup> advising that they are preparing an archaeological assessment for a project involving the construction of a new 90' AT&T Wireless Services, Inc. tree monopole to be located at 333 Warwick Turnpike.

Letter dated October 15, 2004 from McKittrick Engineering Associates, Inc. advising that the owner of Block 12101; Lot 1 is applying for a General Permit #25 to conduct certain limited activities in freshwater wetlands or State open waters.

## Addendum to Agenda

### **COMMUNICATIONS**

The following correspondence was received and filed:

Letter dated October 20, 2004 from EcolSciences, Inc. advising that the application for a Letter of Interpretation for Michael and Sherri Zupp for property located on Martha Street, Block 12110; Lot 6 has been resubmitted.

Letter dated October 21, 2004 from Suburban Trends enclosing an affidavit attesting to the circulation of the newspaper for the period October 1, 2003 to September 30, 2004.

Letter dated October 26, 2004 from the Herald News enclosing an affidavit attesting to the circulation of the newspaper for the period October 1, 2003 to September 30, 2004.

Letter dated October 26, 2004 from The Record enclosing an affidavit attesting to the circulation of the newspaper for the period October 1, 2003 to September 30, 2004.

### **ADJOURNMENT**

Meeting adjourned by unanimous consent at 9:33 p.m.

Respectfully submitted,

Grace R. Davis  
Secretary