

**WEST AMWELL TOWNSHIP  
PLANNING BOARD MEETING  
April 19, 2011**

The West Amwell Township Planning Board meeting was called to order at 7:30 PM by Chairman Pfeiffer followed by the salute to the flag.

The following statement of compliance with the Open Public Meetings Act as listed on the meeting agenda was read into the record by Chairman Pfeiffer: This meeting was called pursuant to the provisions of the Open Public Meetings Act. This meeting was included in a list of meetings transmitted to the Hunterdon County Democrat and Trenton Times on January 27, 2011. Notice has been posted on the bulletin board at Town Hall on April 14, 2011, and has remained continuously posted as to required notices under the Statute. A copy of this notice is available to the public and is on file in the Office of the Planning Board and Township Clerk.

The following general policy statement of the Board was read into the record by Chairman Pfeiffer: The Board's general policy is to end the presentation of testimony on applications by 10:30 PM and to conclude all Board business by 11:00 PM. When necessary, the Chair may permit a reasonable extension of those time limits.

The meeting was recorded via digital recording system and a copy of the CD is on file in the Office of the Planning Board.

**Attendance – Roll Call**

**Present:** Lonnie Baldino  
Stephen Bergenfeld  
George Fisher  
John Haug  
Tom Molnar  
Sean Pfeiffer  
Hal Shute  
Chester Urbanski  
Joan Van der Veen  
Rob Tomenchok – Alt. #1  
Attorney Shurts  
Engineer Decker

**Excused:** Nella Hamtil – Alt. #2

**Approval of Bill List**

Mr. Urbanski commented that he liked the level of detail provided in the bills submitted by Attorney Shurts. Engineer Decker was asked if Van Cleef can provide the same type of format in their billing. Engineer Decker indicated he would check into the matter and get back to the Board.

A motion by Urbanski, seconded by Van der Veen to approve the vouchers for payment as listed on the 4/19/11 bill list was unanimously approved by roll call vote.

**Resolutions of Approval**

It was noted for the record that there were no Resolutions listed on the agenda for approval.

## **Applications**

### **Amwell Valley Conservancy – Minor Subdivision – Block 7 Lots 16.01, 17 and 19.01 – Discussion on Request for Waivers**

Present for the discussion was Attorney George Dilts on behalf of the applicant Amwell Valley Conservancy (AVC), Engineer Gary Marmo and AVC's Secretary John Coley.

Attorney Shurts commented that he had distributed a letter this evening addressing an issue between Attorney Dilts and Engineer Clerico regarding the Township's Stream Corridor Ordinance and its applicability to this application. Engineer Clerico believes that the Stream Corridor Ordinance is triggered by Section 109-148B because the application is for minor subdivision approval. Attorney Dilts believes the Ordinance is not applicable to this application specifically because no development is being proposed and the Ordinance specifically pertains to land disturbance. Attorney Shurts suggested that it seems appropriate for the applicant to request a waiver from Section 109-148B of the Ordinance and noted that if the Board agrees, they can grant a submission waiver from the requirements of this section which would allow for the application to be deemed complete. He noted that if additional information is needed to make an informed decision, the Board can request such information during the hearing process. Attorney Dilts agreed with the suggestion.

Attorney Dilts explained that the proposed subdivision/lot line adjustment is extremely minor. He indicated they are cutting off approximately 156 square feet from Lot 16.01 and approximately 1522 square feet from Lot 19.01 both owned by Arthur Foran and merging the land with Lot 17 owned by AVC in order to get the existing dam entirely on Lot 17. Attorney Dilts explained the dam was built in 2002 and part of it rested on the adjoining parcels. He noted the State has requested that the dam be located entirely on Lot 17 because the AVC is responsible for its maintenance. Attorney Dilts stated there are no plans for any development and remarked that Mr. Foran has consented to the minor subdivision plan submitted to the Board.

Attorney Dilts commented that if the Board would like to hear from Engineer Marmo they can provide all of their testimony and conclude the matter this evening. Attorney Shurts noted there is no noticing requirement for this application and there are no variances being requested. He indicated he did not see any problem with the Board continuing with the public hearing.

Attorney Dilts referred to Engineer Clerico's review memo dated 4/8/11 and stated that he recommended the requested waivers with the exception of 19-C regarding the Stream Corridor Ordinance. Chairman Pfeiffer noted that the Stream Corridor Ordinance was amended last year to allow the granting of relief in cases where extraordinary exceptional situations uniquely affecting a specific piece of property apply. Engineer Decker noted that he agreed with Attorney Shurts' suggestion to grant a submission waiver for this item.

Chairman Pfeiffer remarked that the applicant's also requested a waiver from item 19-G on the checklist regarding certification that the property in question has not been part of a prior application. Attorney Dilts commented that he learned after the fact that Mr. Foran's property had been the subject of previous subdivisions and he noted that they will provide the information. He asked for a waiver at this time and commented that once the Board hears the testimony they may decide that the information is not needed.

Mr. Urbanski referred to page 4 of Engineer Clerico's memo where it indicated that he had previously advised the applicant that he could not recommend that a waiver from this checklist criteria be granted since the subject application for a boundary line adjustment is by definition a minor subdivision and as such is subject to the Stream Corridor Ordinance. Mr. Urbanski asked if the AVC application triggers the ordinance or not. Attorney Shurts commented that the Stream Corridor Ordinance is a factor that must be considered and explained that upon review of the Ordinance it specifically states in Section 109-148B the provisions apply to land disturbances

resulting from or related to any activity or use requiring an application for any of the following approvals such as subdivisions. He noted that there is no land disturbance with respect to this application and therefore there is no reason to apply the Stream Corridor Ordinance.

Mr. Urbanski commented that he believed the applicant's should seek relief from the Ordinance and ask for a C-1 variance rather than request a waiver from it. Chairman Pfeiffer remarked that Attorney Shurts's letter addresses the issue. Attorney Dilts added that there are no land disturbances and indicated he does not believe there is any reason to seek variance relief.

Mr. Baldino remarked that the sole purpose of the minor subdivision is to take the burden of responsibility for the dam off of the adjacent property owners of the AVC. Attorney Dilts clarified that when the dam was first conceived that was the agreement between the property owners. He noted the dam was built and one end of it still remains on the two parcels owned by Mr. Foran. He indicated the State has said they want the dam located entirely on the AVC property which is what the applicant is trying to do. Mr. Haug commented that if the State is regulating the dam then there is no purpose to involve the Stream Corridor Ordinance. The majority of the Board agreed and the submission waiver for this checklist item was granted.

A motion by Baldino, seconded by Haug to deem the application complete and grant the requested submission waivers from item 19C and 5G was approved by roll call vote.

The Board moved forward with the public hearing on this application. Gary Marmo came forward and introduced himself as the Land Surveyor for David A. Stires, Associates. He was sworn in and referred to the plan dated 9/17/10 and revised 2/11/11 which was submitted with the application. The plan was marked as **Exhibit A-1**. Mr. Marmo affirmed that the AVC and Mr. Foran are in agreement with the minor subdivision application which was recommended by the State in order to get the existing dam located entirely on the AVC property. Attorney Dilts remarked that the dam was built in 2002. He noted that the AVC property known as Block 7 Lot 17 contains the majority of the dam but a small portion of it is also located on two of Mr. Foran's parcels known as Block 7 Lot 16.01 and Lot 19.01. Attorney Dilts explained a small triangular piece of Lot 16.01 (156 sq. ft.) will be subdivided off and annexed to Lot 17 as well as 1522 sq. ft. of Lot 19.01 in order to get the dam situated entirely on AVC's property. Mr. Marmo added that there is no proposed disturbance to the land.

Chairman Pfeiffer asked about the concrete wall shown in the site plan detail. Mr. Marmo explained there is a rip-wrap edge around the dam itself for stabilization and the remaining area is all concrete. Chairman Pfeiffer also commented that the area is part of the Alexauken Creek and noted that if there was any disturbance the category 1 regulations would be triggered. Mr. Marmo agreed. With regard to the Stream Corridor Ordinance, Attorney Dilts asked Mr. Marmo to comment on its applicability to this application. Mr. Marmo stated that the language in the Ordinance does not apply to this application because there is no development/land disturbance being proposed.

Engineer Decker commented that the application is straight forward and noted that the Stream Corridor Ordinance would be triggered by any construction proposed in the future and is not currently applicable to the proposed minor subdivision.

Attorney Dilts noted that item G on the checklist requires them to submit copies of resolutions of subdivision or other approvals pertaining to the subject property(s) within the last 4 years and commented that they had asked for a waiver because they were unaware of the prior applications by Mr. Foran. Ms. Andrews indicated that she had received copies of all previous resolutions regarding the subject properties from Attorney Dilts' partner, Attorney Koester who was handling the application originally.

Chairman Pfeiffer asked what zone the property is located in. Attorney Dilts indicated it is in the RR4 zone. He asked if after the subdivision Lot 19.01 would still have more than 4 acres. Attorney Dilts indicated that was correct. Chairman Pfeiffer asked if the access to the dam will be completely through the AVC property. Attorney Dilts confirmed this was correct as well.

Mr. Shute asked about the use and maintenance agreements associated with the dam and asked if everything was self contained on the AVC property. Mr. Coley of 46 Mountain Boulevard, Warren, NJ 07059 came forward and was sworn in. He explained that the reason the subdivision must be accomplished is because AVC has the obligation to maintain the dam in perpetuity and the dam needs to be entirely on their property in order to be able to do so.

Arthur Foran came forward and identified himself as the property owner of Lot 19.01. He was sworn in and explained that although the dam looks like an earthen dam it contains concrete and has an inverted arch composed of hydro-cement which is about 2.5 ft. thick and about 30 ft. deep which runs the full length of the dam—approximately 300 ft. He stated the original dam was installed in 1928.

A motion by Fisher, seconded by Van der Veen noting that the Stream Corridor Ordinance does not apply to this application because there is no proposed land disturbance was approved by roll call vote.

A motion by Haug, seconded by Bergenfeld approving AVC's minor subdivision subject to Engineer Decker's final review of the deeds was unanimously approved by roll call vote.

Engineer Decker was excused from the meeting at this time, 8:15 PM.

## **Unfinished Business**

### **Discussion – Draft Revised Fee Ordinance**

Chairman Pfeiffer remarked that review of Ordinance 6, 2011 listed on tonight's agenda establishes a special meeting fee in Section 109-11. He noted that this section is related to site inspection fees and added that the fee schedule already includes a special meeting fee. He indicated he spoke with Clerk Olsen regarding this matter and she had suggested that the special meeting fee be dealt with through the existing ordinance rather than through Ordinance 6, 2011.

Chairman Pfeiffer noted that he, Mr. Baldino and Mr. Haug all met last week to discuss the fee ordinance. He remarked that the Township's escrow and application fees have not been touched in decades. It was noted that the limited amount of escrow collected up front often creates a problem administratively where Ms. Andrews is constantly asking applicant's to replenish their accounts. Chairman Pfeiffer commented that the work group established new fees and escrows consistent with what other municipalities are charging while still recognizing the importance of agriculture to the Township.

Attorney Shurts commented that Section G on page 2 and Section E on page 4 should be revised slightly. He stated that Section G deals with subdivisions and Section E deals with site plans and he suggested that language be added to include *final approval* as well.

A motion by Van der Veen, seconded by Urbanski to recommend the Fee Ordinance be forwarded to the Township Committee for introduction as revised was unanimously approved by voice vote.

### **Planning Review of Ordinance 6, 2011: An Ordinance to Amend Chapter 109 of the Code of the Township of West Amwell to Establish Special Meeting Fees**

Chairman Pfeiffer remarked that he had previously mentioned special meeting fees are already incorporated into the existing fee schedule. He also noted that Ordinance 6, 2011 does not contain the existing language in the current fee schedule which states special meetings are *if* requested by the applicant and approved by the Board, which is a significant point. Chairman Pfeiffer recommended that Ordinance 6, 2011 be tabled as suggested by Clerk Olsen and that special meeting fees be dealt with through the existing fee ordinance. The Board agreed.

A motion by Urbanski, seconded by Fisher to table Ordinance 6, 2011 and deal with special meeting fees through the Fee Ordinance was unanimously approved by voice vote.

**Planning Review of Ordinance 7, 2011: An Ordinance to Amend Chapter 109 of the Code of the Township of West Amwell – Approval Agency (*Site Plan Approval*)**

Chairman Pfeiffer noted this ordinance was reviewed last month and he has since put it in ordinance format and sent it to Planner McManus for review. He remarked that she had a minor comment about removing the language with respect to the Council on Affordable Housing (COAH) which he removed. Chairman Pfeiffer indicated Ordinance 7, 2011 was introduced by the Township Committee and the Board needs to make a recommendation regarding adoption.

Mr. Urbanski commented that the amendment seems lengthy and complex. Chairman Pfeiffer noted that the proposed amendment was to clarify what requires site plan review and what does not. He specifically noted that the current ordinance did not specify that commercial development requires site plan review and Mr. Baldino felt that that gave the Zoning Officer too much authority.

A motion by Haug, seconded by Baldino to find Ordinance 7, 2011 consistent with the Master Plan as revised and recommend adoption by the Township Committee was unanimously approved.

**Discussion – Community Facilities Plan Element Update – Final Draft Status Update**

Chairman Pfeiffer commented that the Planning Board is holding off on scheduling a public hearing for this Element until after the 2011 budget is adopted.

**Discussion – Economic Plan Element – Status Update**

Mr. Shute commented that limited progress on the Economic Plan Element has been made since last month. He remarked that he is beginning to question whether or not it is worth following through with this matter and stated there is no meat to hang on the bones at this point.

After some discussion by the Board it was the consensus to establish an outline for the Economic Plan Element that could be reviewed upon Master Plan Reexamination. It was noted that an outline would at least establish policy guidance. Mr. Shute remarked that he and Mr. Tomenchok will work on drafting an outline.

**Discussion – Conditional Use Ordinance Review Status**

Chairman Pfeiffer commented that he, Mr. Haug and Mr. Baldino will likely have a first draft ready for review next month.

Mr. Urbanski commented on Section 109-99 of the ordinance regarding riding academies specifically noting that there is no definition in this section for accessory dwellings. He commented that farm dwellings are defined but not regulated. Mr. Urbanski also commented on the enforcement of more than 1 horse per acre as referenced in Section 109-99. Chairman Pfeiffer suggested that the Agricultural Advisory Committee review the current

ordinance and make track changes showing their recommended changes and the reasoning behind any suggested revisions.

### **Status of Plan Endorsement**

Chairman Pfeiffer noted a letter had been received from the Office of Smart Growth (OSG). He remarked that Plan Endorsement was originally pursued under former Mayor Palladino in 2005 because she felt that Endorsement would help expedite the removal of the then sewer service area as well as the requirement at the time that you needed to obtain Plan Endorsement in order to maintain COAH certification. Chairman Pfeiffer explained that subsequently there were additional issues and he noted that everything has now been resolved and the Farmland Preservation Plan was approved. He noted he has spoken to Planner Hintz who recommended that the Township no longer pursue Plan Endorsement.

It was the consensus of the Board to recommend a letter be sent from Mayor Molnar indicating the Township is no longer interested in pursuing Plan Endorsement. Mr. Molnar noted that he will speak to Clerk Olsen regarding sending a letter.

### **New Business**

Chairman Pfeiffer questioned a letter received by Mr. and Mrs. Gross regarding their belief that a certified list of property owners for an adjoining Block and Lot (owned by Mr. Lucarini) is still inaccurate. Chairman Pfeiffer remarked that this letter is not related to any business before the Board/Township, but rather related to an application filed with the New Jersey Department of Environmental Protection (NJDEP) regarding wetlands. He asked Attorney Shurts if the Township is at risk—assuming the Gross's letter is correct.

Attorney Shurts commented that the subdivision deeds have been approved for Mr. Lucarini's application back in March 2011. He noted that assuming the deeds were filed with the County copies will be sent to the Tax Assessor and then the appropriate changes should be made to the Township's tax maps. He stated he did not know what the Board could do to correct the situation. He indicated there has been previous communication between representatives of the Board and Tax Assessor Gill as well as between him and Mr. Gill regarding this matter.

Mr. Urbanski remarked that the Board has done everything they can and the problem is really between Tax Assessor Gill and the Gross's.

Chairman Pfeiffer commented that under State Statute the land owner has the right to rely on the certified list provided by the Tax Assessor even if it is inaccurate. He asked who is responsible for the accuracy of the tax map/certified list if a land owner who was not notified decides to pursue some sort of legal action. He noted that the Board Attorney notified those neighbors not on the certified list so there would not be any risk to the Planning Board upon hearing the application. He questioned whether or not the Township is liable for continued potentially incorrect information being generated from the Tax Assessors Office. Mr. Urbanski remarked that that is a question for the Township Attorney. Attorney Shurts and the Board agreed.

Attorney Shurts was excused at this time, 9:07 PM.

### **Approval of Minutes**

A motion by Van der Veen seconded by Baldino to approve the Board's minutes from the 4/19/11 meeting as revised was unanimously approved by voice vote.

### **Adjournment**

A motion by Baldino, seconded by Urbanski to adjourn was unanimously approved by voice vote.

The meeting adjourned at 9:12 PM.

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Maria Andrews, Planning Board Secretary