

**WEST AMWELL TOWNSHIP
PLANNING BOARD MEETING
March 16, 2010**

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 28, 2010. Notice has been posted on the bulletin board at Town Hall on March 11, 2010, 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
Zach Rich – Alt. #1
Rich Storcella – Alt. #2
Engineer Clerico
Planner Hintz
Attorney Shurts

Excused: No one

Approval of Bill List

A motion by Urbanski, seconded by Fisher to approve the vouchers for payment as listed on the 3/16/10 bill list was unanimously approved by roll call vote.

Resolutions of Approval

There were no resolutions listed on the agenda for approval.

Applications

Public Hearing: Lucarini – Block 32 Lot 4 – Minor Subdivision/Variance Application

Attorney Shurts explained that the public hearing on this application began at the Board's 1/19/10 meeting and was carried to this meeting. He noted that no additional public noticing was required because at that time Mr. Lucarini had granted the Board an extension of time to hear his application until the 3/16/10 meeting.

Present for the application was property owner Adam Lucarini and his Surveyor David Newton. Attorney Shurts noted Mr. Lucarini was still under oath and swore in Mr. Newton. The Board accepted Mr. Newton as an expert to provide testimony on this application. Mr. Newton explained that there were some amendments made to the plan previously reviewed at the 1/19/10 meeting. He noted that all of the requested variance relief has been alleviated. The lot has been widened and the buildable lot area increased. Mr. Newton said lot 4 is just over 20 acres and proposed lot 4.02 will be almost 8 acres, leaving just over 12 acres remaining for Mr. Lucarini's existing homestead.

Mr. Newton elaborated on lot 4.02 saying that when the areas within the right-of-ways of Route 518 and Wilson Road are netted out, 7.88 acres are left. Existing Lot 4 is deed restricted by a prior subdivision nearly 30 years ago such that any future subdivision must have access from Wilson Road.

Mr. Newton noted they had received Engineer Clerico's review letter dated 3/11/10 and indicated they plan to address all of the issues raised in the letter.

Chairman Pfeiffer asked for clarification that the Wilson Road access is based on a prior resolution. Mr. Newton explained that the Corner lot 4.01 owned by the Lieggi's was cut from this tract 23 years ago and at the time of that subdivision, the Wilson Road access was established and deed restricted. He remarked that the County always likes to minimize access to their roads for safety purposes. Chairman Pfeiffer commented this information is reflected in note #4 on the site plan.

Both Mr. Fisher and Mr. Urbanski asked if there was any way to obtain access from Route 518. Mr. Newton commented that the safety issue is the key and deed restrictions are binding. Chairman Pfeiffer asked Planner Hintz for his comments on the matter. Planner Hintz remarked that the County does try to limit the number of access points on County roads and suggested that a shared driveway may be an option. He indicated in his opinion it is preferable to access a lower speed road such as Wilson Road rather than Route 518. Planner Hintz noted that there are wetlands on lot 4.02 at Route 518 and at Wilson Road which will require permits from the New Jersey Department of Environmental Protection (NJDEP). Planner Hintz suggested some testimony be provided from the applicant regarding access to Wilson Road. Mr. Newton noted that they have applied for a permit from the NJDEP.

Engineer Clerico noted for the record that there is a reference to the deed restriction. He said the applicant was required to, and did submit, a copy of the deed of record and the restriction that Mr. Lucarini was referring to, related to lot 4, says, "Access to all lots created by further subdivision of lot 4 shall be restricted to Wilson Road via the access strip defined by courses 4 through 6 above." It was

noted that this restriction was part of the deed when Mr. Lucarini purchased the property in 1997 but the lot was created prior to this date.

Engineer Clerico referred to his review memo and commented that the subdivision is now in conformance with lot width and the minimum lot area requirement. Therefore, variances are no longer being requested. He did note that the driveway plan along with the dwelling and related disturbances trigger the ¼ acre minimum standard for stormwater management regulations compliance. Engineer Clerico explained that the applicant must demonstrate how they can comply with the stormwater regulations or adjust their plan to get under the ¼ acre disturbance threshold. He indicated language to this effect should be incorporated as a deed acknowledgement so anyone building on the lot would be aware of the stormwater regulations compliance requirement. Chairman Pfeiffer asked if this has been dealt with as a condition of approval in the past. Attorney Shurts noted stormwater compliance was a condition of approval in the Gulick application. Chairman Pfeiffer commented the stormwater language would have to be in the deed and the resolution of approval. Engineer Clerico added the language should be included on the plan as well. Mr. Newton remarked that the plan is showing a proposed home location but noted there is no specific plan for development at this time. He commented that the home can be moved 20 feet or the driveway shortened if necessary to get under the ¼ acre disturbance threshold. Mr. Newton also noted that the State does not view gravel driveways as impervious. Engineer Clerico commented that under the State's definition for stormwater regulations, gravel is impervious. Mr. Newton remarked that there is no need to take the stormwater regulations to deed status since they are aware of the guidelines and do not intend to go over the threshold. He noted that at the time a building permit is pulled for any potential home construction they will show compliance with all stormwater regulations. Chairman Pfeiffer suggested the plan should be revised to show the shortened driveway. Mr. Newton indicated he will amend note #17 on the plan to address the stormwater issue.

Engineer Clerico outlined his review letter noting the following comments regarding the newly submitted documentation:

1. Mr. Lucarini's Engineer must document the quantity of stormwater conveyance that would occur along the north side of the driveway so that appropriate swale dimensions can be established. Engineer Clerico remarked that as proposed, the new driveway will intercept and divert most of the runoff from the adjoining lot 4.01 and the rear portion of the proposed lot 4.02 along the north side of the new driveway out toward Wilson Road. It was noted that the water will eventually be conveyed to the proposed culvert pipe crossing the new driveway on Wilson Road, but the drainage calculations as submitted do not account for this conveyance. Additionally, Engineer Clerico explained that the conveyance from the drainage from the wetlands crossing area are not included in the calculations either, and he noted that the upstream areas

West Amwell Township Planning Board Minutes – 3/16/10

along Wilson Road that are also flowing in the existing ditch to this proposed culvert location should also be included.

2. Tree removal along the proposed driveway area. It was noted that there are 2 existing large oak trees that are not expected to be cut down but may not be able to remain due to the grading that may be required for driveway installation. Engineer Clerico noted that if these trees are going to be removed, the plan must reflect that.
3. NJDEP permits for construction of the driveway. It was noted that the applicant has obtained permits from the NJDEP but the disturbance outlined by the applicant and approved by the NJDEP will be exceeded according to the disturbance shown on the proposed driveway plan. Engineer Clerico indicated that if the plan is approved as presented, the Board would need to condition their approval upon the applicant's ability to obtain an amended permit from the NJDEP to account for the actual wetland area of disturbance, or the driveway plan must be amended to show compliance with the current NJDEP permit or specify that modification of the existing permit is required.
4. Conservation Easement(s). It was noted that the applicant's plan does depict three types of conservation easements: A standard wetland conservation easement, a conservation easement that encompasses the woodlands and a conservation easement that encompasses both. Engineer Clerico commented that the proposed conservation easement for the wetlands area only includes the wetlands themselves and not the designated transition area. He remarked that since the disturbance within transition areas is also a regulated activity and since the applicant is not proposing any disturbances in those areas, the conservation easements should be expanded to include the buffer areas as well.

Mr. Newton noted that he is a Land Surveyor, not an engineer and any issues with the driveway design will have to be addressed by driveway Engineer/Designer Bill Hall and questioned what benefit a swale along the driveway will provide. Engineer Clerico noted that the swale is already part of the plan the applicant submitted, but its dimensions are not provided. He said typically there are calculations showing that whatever the design is, it is adequately sized based on the slope and the vegetation of that swale to convey whatever water is being intercepted out to Wilson Road.

Mr. Newton addressed the conservation easements saying there is a proposed 150 foot conservation easement along the rear of both properties to protect the trees and alleviate the need for a woodlands management plan. He said the wetlands and buffer areas are protected by State Law. He pointed out that Engineer Clerico misinterpreted the conservation easements on the plan. He said the conservation easement legend shows the horizontal striping depicting wetlands which are protected by State Law and the vertical stripes depict where they are proposing a conservation easement which is only along the rear of both properties. Engineer Clerico responded that the Board typically requires conservation easements on delineated wetlands so that any future property owner has some knowledge of where those wetlands are. Mr. Newton referred back to the State Law saying that it is illegal to produce maps from this point forward without the wetlands Letter of Interpretation (LOI) information included. It was clarified that the applicant is only proposing a 150 foot conservation easement along the rear of both properties. All other wetland areas will be protected by buffers only. Engineer Clerico suggested that since he interpreted the plans to show conservation easements on all wetlands, they may want to amend the conservation legend on the plans for better clarification.

Chairman Pfeiffer addressed consistency with other applications and asked Engineer Clerico how this matter has been dealt with in the past. Engineer Clerico noted that wetlands have been kept in conservation easements ever since there has been a wetlands regulation. He noted that as the Board will hear with the next application on the agenda, conservation easements bear some consequences. Planner Hintz noted it has been his

experience that wetlands are placed in conservation easements. He added that the property should also be staked out showing where the wetlands are for future reference. Mr. Newton commented that wetlands are a dynamic ever changing aspect of a property and any demarcation is instantly lost. Engineer Clerico explained that in a situation where an applicant has delineated wetlands, historically they have always been encompassed in a conservation easement. Mr. Newton commented that when a Town generated conservation easement is imposed upon State protected wetlands you are protecting the same thing twice. He said the wetlands are protected by State Law which will be in the deed and on the plan.

Planner Hintz commented that he has seen conservation easements imposed on wetlands many times and in many other Towns. He noted the problem with this application is that there is such a varied wetland area that runs through lot 4.02 in a couple of areas and any future owner will not know where those wetlands are unless they are physically marked on the property somehow. Chairman Pfeiffer asked in this case where the wetlands are delineated, was it Planner Hintz's recommendation to impose a conservation easement. Planner Hintz said yes. Mr. Fisher asked if conservation easements are required. Engineer Clerico commented that he is not aware of anything that mandates a conservation easement, but they have traditionally been imposed.

Mr. Storcella commented that the Board has seen both sides of the discussion where wetlands have changed. He asked if the Board does implement a conservation easement, is there a way to say that there will always be a conservation easement based on whatever the LOI says to cover any changes that may occur in the delineated area. Chairman Pfeiffer and Engineer Clerico both said no and Chairman Pfeiffer explained that there must be a fixed description accompanying the delineated conservation easement area. Engineer Clerico noted that there is no obligation for any property owner to obtain an LOI. Mr. Newton remarked that the NJDEP will impose a fine of \$10,000 per day if wetlands are violated. He indicated this is a lot harsher than anything West Amwell would impose on someone who violates a conservation easement.

Attorney Shurts commented that the Board must make a decision based on what is in front of them. He said the Board has no idea what the wetlands boundaries are going to be 5 years from now. He remarked the likelihood is that someone will get an LOI in the future should they decide to develop this land. He said he does believe that the wetlands areas are protected by the State and there is a downside to imposing a conservation easement which makes a hard decision for Boards. Chairman Pfeiffer commented that this might be something the Board should look at as a policy going forward but to be consistent and fair and based on what the Board's professionals have said, he remarked that he thinks the conservation easement is something the Board should require here. Chairman Pfeiffer polled the Board for comments regarding imposing a conservation easement:

Mr. Haug: Expressed that he didn't think a conservation easement should be imposed since there is no firm policy on the matter at the present time. He indicated that the Board may wish to review the policy in the future.

Mr. Urbanski: Expressed that he really likes conservation easements but he can clearly see the applicant's point of view and said no to the conservation easement in this case.

Mr. Fisher: Expressed that we would be adding another layer of complexity that doesn't make sense and said no to the conservation easement.

Mr. Storcella: Expressed that the issue is complex and the State can deal with it at their level.

Mr. Rich: Expressed that the State has already dealt with it and said no to the conservation easement.

Mr. Baldino: Expressed that there is no definition in the land use ordinances for a conservation easement and if the State already regulates the wetlands, then he doesn't agree with the conservation easement. He continued to express that if the wetlands change and there is a conservation easement imposed, it could prevent a homeowner from using their property which isn't right.

Mr. Molnar: Expressed that he agreed with no conservation easement.

Mr. Shute: Expressed that years ago when he was on the Open Space Committee there was such a thing as a floating exception within a conservation easement. He explained that the Attorney General then said it couldn't be done because conservation easements can't be changed. He said it doesn't make sense to impose a conservation easement on something that is probably going to change. Additionally he noted that the NJDEP wants the Township to add all of their conservation easements to the Recreation and Open Space Inventory (ROSI) and then the easements will belong to the NJDEP and they will have control over them. He said that going forward the Board should take a different path and not impose conservation easements.

Ms. Van der Veen: Commented that the LOI expires in 5 years rendering the wetlands unprotected. Mr. Newton said the wetlands are always protected even if the LOI expires. Ms. Van der Veen continued to express that the Planning Board always tries to do things to help future property owners and being more specific and clear in the deeds avoids surprises. She said she was in favor of not imposing the conservation easement as long as the deed reflects that there are wetlands on the property.

Mr. Bergenfeld: Expressed that he is fine with the conservation easement proposed along the rear of the properties.

Chairman Pfeiffer commented that the Board may have had a type of policy just by requiring conservation easements historically but indicated that some of the recent issues that have come up raise some questions as to whether or not the conservation easements should continue to be imposed. Attorney Shurts suggested that a schedule/rendering could be attached to the deeds depicting the wetlands areas. Mr. Newton noted that there are wetlands descriptions included in the metes and bounds description of the deeds. Ms. Van der Veen commented that drawings lose their clarity over time when they are copied over and over again whereas written documentation doesn't.

Mr. Newton commented that the basic premise of the conservation easements was to alleviate the need for a Woodlands Management Plan and to protect the trees at the rear of the properties. He referred to the two large oak trees near the driveway area and indicated they are not proposing to remove them at this time but said if they need to be taken down in order to construct the driveway he would like some type of assurance from the Board that they will not have to comply with the woodlands management ordinance. Engineer Clerico commented that he did not review the plans from a woodlands management perspective because the applicant represented that no trees were being removed and he did not review the woodlands ordinance to see if removing those trees would be regulated under the ordinance.

Chairman Pfeiffer commented that if the trees have to be removed that is the point at which the applicant would have to comply with whatever tree removal ordinances are in effect. Mr. Newton asked if they can revise the notes on the plan to say, "No trees will be removed except 2." Engineer Clerico explained the conservation easements and the potential tree removal are mutually exclusive. He commented that relative to subdivisions, the woodland ordinance has a whole stipulation regarding woodlands and Mr. Lucarini originally asked for a waiver from documenting anything because he represented that no trees were going to be removed. As part of that discussion, the Board indicated the bulk of the trees are located in the rear of the properties and suggested a conservation easement be imposed which Mr. Lucarini agreed to at the time. Subsequently, Mr. Lucarini revised the plan to reflect what he agreed to. Engineer Clerico said this has nothing to do with the issue of the driveway and whether or not the ordinance even regulates the removal of a couple of trees.

Mr. Bergenfeld asked what the purpose of Mr. Lucarini granting a conservation easement along the rear of the property was for. Engineer Clerico commented that the subdivision ordinance and woodland ordinance requires, on a development application, that the woodlands contained on the property be classified, categorized and documented. He continued to explain that Mr. Lucarini did not do this on his original application/plan

submission and asked for a waiver of the checklist requirement because he noted that Mr. Lucarini said he did not intend to remove any trees so there was no point in delineating them and the Board accepted his stipulation.

Mr. Newton remarked that they have provided two conservation easements each consisting of 1.5 acres in lieu of doing a Woodlands Management Plan. He said they want an assurance that they will not have to give the easements and then also be required to do a Woodlands Management Plan because of two trees which Engineer Clerico says may need to be removed. Mr. Newton indicated again that he wanted to revise the notes on the plan to say, "No trees will be removed except 2." Chairman Pfeiffer remarked this is really a legal point and indicated the Board can only address what is before them and what was represented to the Board was that no trees were going to be removed. Mr. Bergenfeld asked if the Board could grant conditional approval that 2 trees can be removed. Chairman Pfeiffer explained the plans would have to be amended. Mr. Newton remarked that if the plans are going to be changed based on the previous discussion regarding the location of the proposed dwelling, then why can't the note about the trees be added?

Mr. Shute asked if the Board can grant a waiver from the Woodlands Management Plan. Chairman Pfeiffer noted the problem is that the applicant represented one thing and now he may be doing something else. Mr. Shute remarked that the woodlands management ordinance really shouldn't apply here because there are no woodlands out by Wilson Road. Mr. Fisher suggested the Board move on with the application. Mr. Baldino noted no permits are required for this type of tree removal. Mr. Shute commented that he does not see how the Board can approve the application without granting the waiver to the woodlands ordinance because there are woodlands on the property. Chairman Pfeiffer stated he doesn't think the woodlands ordinance would be triggered based on what has been represented but the point is the Board cannot offer assurances on what ordinances may be in effect 10 years from now. Mr. Newton stated he will revise the note on the plan to say, "No trees will be removed except 2."

Chairman Pfeiffer indicated that the issue of land markers brought up by Planner Hintz is mute if the conservation easement is not going to be required. Engineer Clerico wrapped up his comments by addressing one last point: The future development of remaining land lot 4. He explained the applicant represented that he had no intention of further subdividing the property and this should be included as a note on the plan.

Mr. Lucarini commented that he would like to explore his options for Farmland Preservation rather than deed restricting his land. Chairman Pfeiffer remarked that the 12 acres of remaining land will most likely not meet the minimum criteria for preservation. He suggested Mr. Lucarini speak with the Hunterdon County Planning Board to determine whether or not he meets the minimum County criteria for County cost share. He noted that generally a parcel needs to be 40 acres or contiguous to other preserved farmland. Mr. Lucarini noted that Bill Corboy suggested he go under Farmland Preservation when he appeared at the Township Board of Health to seek a waiver for the reserve septic.

Chairman Pfeiffer commented that lot 4 is currently deed restricted so that future subdivision can only occur off of Wilson Road. He said in effect that means that lot 4 cannot be further subdivided. Mr. Newton noted that lot 4 does not meet the minimum criteria for lot frontage which also makes it un-subdividable without having to deed restrict it. Chairman Pfeiffer indicated no further subdivision was represented by the applicant for the purpose of obtaining completeness review. Mr. Lucarini noted he is not changing his representation because if the property is under Farmland Preservation it is deed restricted. He continued commenting that the Board is asking him to give up 12 acres for nothing when he can recoup funds if he has a shot at preservation.

Chairman Pfeiffer commented that Mr. Lucarini was granted quite a few waivers at completeness review in return for his representation that the remaining land would be deed restricted from further subdivision. Mr. Lucarini commented that he represented he would deed restrict the property if all waivers and all variances were granted but the Board did not honor that because he had to go back and revise his plans to meet the three acre criteria.

Ms. Andrews was asked to get the Board's minutes from 2009 to verify what Mr. Lucarini had represented to the Board. Ms. Andrews read from the Planning Board minutes of 10/20/09, "Mr. Lucarini stated that lot 4 is a 14 acre parcel that contains the home he lives in. He indicated there were horses and pastures on the property and said he does not plan on subdividing the lot any further. He commented that he didn't know how it could be further subdivided due to the current land restrictions and the frontage. Chairman Pfeiffer asked Mr. Lucarini if he was indicating that he will not further subdivide this lot in the future. Mr. Lucarini agreed that he would deed restrict the land from further subdivision. Engineer Clerico clarified with Mr. Lucarini that he understood that agreeing to deed restrict the land would likely be a condition of approval when the subdivision application was heard. Mr. Lucarini stated he had no problem deed restricting the land."

Mr. Lucarini stated he stands by what he said and commented he just doesn't want his deed to say deed restricted when the property can't be subdivided anyway because of the frontage and the access. Attorney Shurts clarified that the language in the deed would simply say the property can't be further subdivided. Mr. Shute expressed that he thought the property might be able to be subdivided under the clustering ordinance. Chairman Pfeiffer remarked this was not an option as long as there is no access from Route 518. Chairman Pfeiffer said it has been represented to the Board that lot 4 is restricted to access from Wilson Road and asked if there is a deed restriction stating this in place. Mr. Newton said yes. Chairman Pfeiffer asked if Mr. Lucarini was representing that that restriction will still be in place. Mr. Lucarini said yes.

Mr. Newton commented that the waivers which were granted were for reserve septic and woodlands management. He asked hypothetically if they completed the LOI across the back of lot 4 and did a Woodlands Management Plan and soil testing of remaining lands and those waivers were rescinded, then the stipulation to deed restrict the right Mr. Lucarini has to revert the restriction to Wilson Road would be possible. Attorney Shurts expressed confusion by the testimony provided and stated the deed that was prepared in 1997, that was submitted to the Board between the Lieggi's and Mr. Lucarini, conveyed Block 32 Lot 4 and the description of it was a 20.313 acre parcel. He said the schedule of the deed contains a statement that access to all lots created by further subdivision of Lot 4 shall be restricted to Wilson Road. Chairman Pfeiffer indicated that the existing restriction will carry over to the remaining land of Lot 4 and it will not be called a deed restriction, but there will be language in the deed stating the land cannot be further subdivided.

Chairman Pfeiffer opened the floor to public comment. Mr. Shute asked about the driveway design relative to the runoff. Engineer Clerico explained that the current design conveys water from the north of this driveway out to Wilson Road. He indicated correct conveyance calculations must be provided and a calculation for the swale as well as a calculation for any water coming down Wilson Road. No one from the public came forward. A motion by Urbanski, seconded by Baldino to close to the public was unanimously approved by roll call vote.

Chairman Pfeiffer outlined what was discussed.

1. There will be language in both the deed and the resolution indicating any future development must comply with all stormwater regulations, as well as a note added to the plan.
2. The plan will be amended to show a shortened driveway and/or relocation of the proposed dwelling.
3. There will be a note added regarding the possible removal of 2 trees by the driveway.
4. There will be language in the deed regarding no further subdivision of Lot 4.

5. The site plan legend will be revised to clarify the conservation easement(s).
6. The plan will be revised to address sections 3 and 4 of Engineer Clerico's review memo.

A motion by Bergenfeld, seconded by Fisher to approve the application with the conditions outlined above was unanimously approved by roll call vote.

Mr. Lucarini asked if Planner Hintz's December 2009 bill was billed against his escrow. Chairman Pfeiffer indicated he had already spoken to the Board Secretary regarding this matter and it was noted that although Mr. Lucarini's neighbors commented on the pending application at the Board's December meeting, no bills should have been taken from the escrow because Mr. Lucarini's application was not actually listed on the agenda for that meeting. Ms. Andrews commented that she didn't recall Planner Hintz's bill being taken from Mr. Lucarini's escrow. Planner Hintz remarked that he was told his December bill was not being paid from escrow funds, but rather Township/Planning Board funds. Mr. Lucarini asked for a letter stating his escrow was billed in error. Planner Hintz commented that his billing was sent to Mr. Lucarini as notification, not as an error. Ms. Andrews noted she would provide Mr. Lucarini with a letter that no bills for the professional's time at the December meeting were taken out of his escrow.

Discussion/Possible Public Hearing: Burgess – Block 19 Lot 7.03 – Waiver Requests/Completeness Determination/ Possible Public Hearing – Conservation Easement Modification

Attorney Shurts explained the applicant is requesting a modification of a conservation easement. One of the conditions of the prior subdivision approval was a conservation easement over the existing wetlands. Attorney Shurts said he had spoken with the Board of Adjustment Attorney who also believes the application should be heard by the Planning Board because of the prior subdivision condition of approval.

Present for this application was property owner Gail Burgess and her Engineers Alex Mikos and Eric Rupnarain of Goldenbaum Baill Associates, Inc. All parties were sworn in and Engineer Mikos explained that the property is a 6.5 acre parcel known as Block 19 Lot 7.03. He said the conservation easement was created during the process of minor subdivision in 1991. It was noted that the wetlands LOI for the subdivision expired in 1995 and Ms. Burgess purchased the property in 1997. Engineer Mikos commented that Ms. Burgess was not aware that the LOI had expired at the time she purchased the property and subsequently applied to the NJDEP for a new LOI based upon the original wetlands delineation. The application was denied by the NJDEP.

The new LOI revealed that the wetlands area was modified, increasing the total delineated area. Engineer Mikos commented that Ms. Burgess has obtained approval from the West Amwell Township Board of Health to install a septic system and has applied to the NJDEP for wetlands general permits. He noted, however, that the NJDEP will not approve the permits until the conservation easement is modified and until the Township grants permission for the construction of the driveway and the dwelling.

Engineer Mikos referred to Engineer Clerico's review memo dated 3/5/10. It was noted that Engineer Clerico recommends waivers be granted from: Checklist item 6, providing the names of property owners within 200 feet of the subject property on the plan and checklist item 23, the proposed location of utility connections for the purpose of completeness determination. Engineer Clerico recommended a permanent waiver be granted from checklist item 22, identifying individual trees on the property.

A motion by Urbanski, seconded by Haug to deem the application complete with the noted waivers was unanimously approved by roll call vote.

The Board proceeded with the public hearing on this matter. Engineer Clerico commented that the parcel is 6 acres and was subdivided several years ago and at the time the R2 zone required 3 acres. Since the parcel contained wetlands, it was made into a 6 acre parcel. Engineer Mikos referred to the plans submitted with the application and commented that the new delineated wetlands area has forced the new home site into the upper corner of the parcel. He noted that additionally the zoning has changed from 3 acres to 6 acres. The setbacks have also changed from 35 feet for the side yard to 60 feet, 50 feet for the rear yard to 150 feet and 75 feet for the front yard to 150 feet.

It was noted that under the old zoning the lot was conforming and no variances were needed to build a dwelling. The three variances being asked for now are: Minimum buildable area, side yard setback and rear yard setback. Chairman Pfeiffer commented that if the variances aren't granted the lot is unbuildable. He also noted that the new conservation easement would be larger than the existing easement. Chairman Pfeiffer said the only thing the Planning Board can do jurisdictionally is to make a recommendation to the Governing Body.

Engineer Mikos explained that if the NJDEP grants the 25 foot buffer reduction they have requested, then they can move the well over and gain a little more room for the dwelling but they will still need the variances. He commented that there are two ways the Township deals with undersized lots or lots where the zoning has changed: The first mechanism is by area. It was noted that the subject lot was oversized from the original subdivision and since it meets the 6 acre criteria it is not eligible for the reduction. The second requirement is a grandfathering provision that allows for reduced setbacks based upon the available frontage. In this case the property has twice the required frontage and so they are left with no choice but to request the variances. Engineer Mikos stressed that the property was conforming at the time of subdivision and even when the zoning changed to the RR6 zone.

Planner Hintz commented that the Board really doesn't have much choice but to recommend the approval. He commented that if they are considering a deck on the proposed home, they may want to amend their application because a deck would further infringe upon the setbacks. Engineer Mikos indicated he would like to amend the plan/application to include a deck bringing the rear setback from 52.5 feet to 32.5 feet.

Mr. Bergenfeld asked if the well was already drilled. Engineer Mikos said no and commented that if they are granted the 25 foot buffer reduction, they will move the well 100 feet away. It was noted that if they drill for a well and can't get water than no house will be built on the property.

Engineer Clerico confirmed that the proposed utilities will follow the driveway. Engineer Mikos said yes.

Chairman Pfeiffer remarked that the Board had received a letter from Stanley and Kathy Stoy who were not present at the meeting. He noted that generally applicants have the right to cross exam any testimony that is given, but the Stoy's have requested their letter be read into the record. Chairman Pfeiffer asked the applicant if she objected to the letter being read. Engineer Mikos objected. Attorney Shurts commented that he wasn't sure if the Board could honor the objection because he believed there is case law on petitions and letters coming before Boards. He said he does believe that the Board received the letter and has a right/duty to inquire about anything in the letter if they want to. Chairman Pfeiffer noted for the record that the Stoy's letter has been received as correspondence.

Mr. Shute referred to the adjoining property owners and their respective well and septic locations. Janet Zuzov of 506 Brunswick Pike came forward and was sworn in. She commented that she owns Block 19 Lot 9. It was noted that Lot 16 was merged into Lot 9 at some point years ago.

Mr. Haug asked if anyone knew how the wetlands became so exacerbated. Engineer Mikos commented that the NJDEP representative said everything she walked on was a wetland because she saw wetlands vegetation. He indicated that he disagrees with her assessment and explained wetlands must meet three criteria: Soils, water and vegetation. He said vegetation alone should not meet the criteria and noted that it would be difficult to change the assessment by the NJDEP. Engineer Clerico agreed.

Attorney Shurts commented that any relief the Planning Board recommends would be subject to the applicant obtaining any and all necessary NJDEP approvals. Engineer Mikos asked if the Planning Board can recommend to the Governing Body to vacate the conservation easement. Attorney Shurts indicated he doesn't believe that the Board can do that and commented that he got the impression the NJDEP believes these easements are theirs. Chairman Pfeiffer noted that the letter from the NJDEP which was provided with the application indicates the NJDEP must approve the elimination of the conservation easement.

Mr. Shute commented that unless or until this conservation easement is added to the ROSI, he is not so sure the easement can't be vacated. Chairman Pfeiffer remarked that the NJDEP regulations are so broad that if they believe the easement should have been on the ROSI it gets entangled in the State. Engineer Mikos suggested again that if the easement is vacated then the NJDEP won't have any jurisdiction over it and there wouldn't be any need to apply to them for anything. Chairman Pfeiffer asked if the Planning Board agrees to make a recommendation to the Governing Body to vacate the conservation easement, would they agree to a deed restriction that the property cannot be further subdivided in the future. Engineer Mikos said yes.

Chairman Pfeiffer opened the floor to public comment and asked Ms. Zuzov if she had any additional comments. Ms. Zuzov came forward and stated that she has lived on her property for 18 years and has noticed that the property has much more water and flooding issues than it did years ago. She expressed concern with potential septic problems. Engineer Mikos explained that the drainage will flow along Ms. Burgess's proposed driveway. He said the water will be diverted out to the street and water/flooding conditions should be improved. It was also noted that stormwater regulations will not be triggered by the proposed development.

Mr. Molnar commented that Mrs. Stoy had called him about the Burgess application and sent him the letter received by the Board. He asked for clarification that the drainage would be improved. Engineer Mikos indicated the proposed driveway would be raised creating a type of berm that would channel the water flow out to the road and divert overland flow away from Mrs. Stoy's septic area. Ms. Van der Veen asked if there was any way to calculate whether or not the road can handle the new water flow. Engineer Mikos remarked a drainage study would cost several thousands of dollars. Engineer Clerico noted the drainage is on a County road. Mr. Fisher pointed out that all of the elevations shown on the plan show the drainage toward the road.

A motion by Haug, seconded by Fisher to close the public hearing was unanimously approved by roll call vote.

A motion by Haug, seconded by Urbanski to approve the requested variances for minimum buildable area, side yard setback and rear yard setback for relief down to 32.5 feet for a future deck was unanimously approved by roll call vote.

Mr. Bergenfeld commented that he would recommend that any costs to proceed with this application be the responsibility of the applicant, not the Township. Attorney Shurts indicated that the Governing Body must make a decision on this matter.

It was noted that Attorney Shurts will review the language in the deed and that a new deed should be filed at some point.

A motion by Haug, seconded by Van der Veen to revise the prior subdivision approval and recommend to the Governing Body that they consider vacating all conservation easements on the property with the conditions that any outside agency approvals that may be required are obtained, there will be language in the deed restricting the property from further subdivision, any relief from any woodlands management ordinance implications be granted and that the underground utilities follow the driveway was unanimously approved by roll call vote.

Engineer Clerico was excused from the meeting at this time, 10:27 PM.

Unfinished Business

Status of Plan Endorsement

Planner Hintz commented that there is no update at this time.

Chairman Pfeiffer asked Planner Hintz to comment on the Union Township sign ordinance which was provided to the Board. Planner Hintz remarked that the Union Township ordinance provides a good outline for West Amwell to work with. Chairman Pfeiffer commented that he recently attended required training per the Township's insurance company and he noted that the billboard ordinance was discussed as an ordinance that has actually been upheld by the Courts. Planner Hintz recommended the sign ordinance be reviewed as soon as possible.

Chairman Pfeiffer commented that he, Mr. Baldino and Mr. Haug met earlier this month to review the Land Use Ordinance and they are recommending the sign ordinance be reviewed.

Planner Hintz was excused from the meeting at this time, 10:30 PM.

Chairman Pfeiffer moved correspondence number 3: Letter dated 2/24/10 from Attorney Shurts, re: Planning Board Subcommittees up on the agenda because Mr. Shute had a comment on it. Mr. Shute remarked on a section of the Municipal Land Use Law (MLUL) 40:55D-27 regarding the functions of the Planning Board. Chairman Pfeiffer commented that he actually spoke to New Jersey Planning Officials (NJPO) about the matter. He said the MLUL is broader and if there is a citizen's advisory committee appointed, they must be notified of all meetings and there are additional noticing requirements. Attorney Shurts commented that subcommittees are an issue of Township policy rather than statute.

Mr. Molnar commented that there will be no subcommittees but Planning Board members can consult with non-members for input and information if they want to.

Attorney Shurts was excused from the meeting at this time, 10:35 PM.

Discussion – Master Plan Reexamination: Status of Review by Board Members

Chairman Pfeiffer commented he and Mr. Haug met to discuss the Conservation Plan Element and they are working on some revisions. He noted that there are a lot of references to the Open Space Plan and the NJDEP had sent a letter last year indicating they wanted the Board to update this plan. He remarked they will review this as well. He also commented that he, Mr. Haug and Mr. Baldino met to discuss the Land Use Element and they are working on some revisions.

Mr. Shute commented that he and Mr. Molnar plan on meeting to discuss Parks and Recreation in April and noted that they don't anticipate a lot of revisions. There was some discussion on reviewing the ROSI. Mr. Shute remarked that he had counted 128 lots that may be affected if the Township is required to add all conservation

easements to the ROSI. He also said that it appears only East Amwell Township is currently including their Development Conservation Easements on their ROSI. He said he is following up to get more information on this.

Mr. Fisher commented that his group had met and reviewed the Circulation Plan. He said it appears some roads need to be added to the Circulation Plan while others need to be reclassified. He noted that the consensus was to not get involved with scenic highways due to the tight budget constraints this year. Chairman Pfeiffer said that since scenic highways were mentioned in the Reexamination report, a sentence should be added to address the issue in some way.

Ms. Van der Veen commented that her group had met and reviewed the Community Facilities Plan and they are working on revisions.

Mr. Urbanski commented that his group had met and reviewed the Historic Plan. He said the concern is how to deal with the possibility of historic structures being demolished and the possible implementation of a waiting period before demolition can occur. He also commented that his group would like to add a brief page outlining the history of West Amwell Township as it relates to historic sites. He remarked that providing addresses for each historic site rather than just names or blocks and lots would be helpful.

Discussion- Master Plan Amendment Update: Farmland Preservation Plan

Chairman Pfeiffer commented that he and Mr. Urbanski had met with Special Planner Linda Weber and she is currently working on the suggested revisions to the Farmland Preservation Plan.

New Business

Correspondence

Chairman Pfeiffer commented on the letter received from the Stony Brook Millstone Watershed and suggested the Board of Health and the Environmental Commission review the letter.

Mr. Shute questioned the letters sent out regarding deficient escrows. Ms. Andrews indicated that the applicants who received letters had replenished their accounts.

Ms. Andrews reminded Mr. Baldino, Mr. Bergenfeld, Mr. Fisher, Mr. Shute, Mr. Rich and Mr. Storcella of their upcoming training class on 3/20/10.

Mr. Molnar commented on recent budget meetings and remarked that if there is no reason to have a Planning Board meeting, they should consider cancelling. He also noted that Attorney Shurts's contract states he gets paid whether there is a meeting or not and this is not the case with the other Board professionals. Mr. Molnar remarked that the Board may want to alter this for next year. Chairman Pfeiffer commented that Attorney Shurts gets a monthly stipend because he does a lot of work outside the meeting, specifically phone calls and paying an hourly rate might cost more.

Approval of Minutes

The Board reviewed the minutes from their 2/16/10 meeting and the following revisions were noted:

Page 6, paragraph 3: **He** addressed Attorney Shurts....**He** noted there is a clustering provision...

The word he will be replaced with Mr. Bergenfeld.

Page 2, paragraph 5: Chairman Pfeiffer commented that after the Board's last meeting, he **went and** reviewed...

The words went and will be removed.

Page 4, paragraph 2: ...discussion with the full **board** ultimately approving everything.

The word Board will be capitalized.

Page 4, paragraph 3: ***At the recommendation of Planner Hintz*** the Land Use Plan Element Subcommittee was asked...

The words At the recommendation of Planner Hintz will be added.

A motion by Urbanski, seconded by Van der Veen to approve the Board's 2/16/10 minutes with the noted revisions was unanimously approved by roll call vote.

Adjournment

A motion by Urbanski, seconded by Shute to adjourn the meeting was unanimously approved by voice vote.

The meeting adjourned at 11:07 PM.

Maria Andrews, Planning Board Secretary