

**WARREN TOWNSHIP PLANNING BOARD
MEETING MINUTES
7:30 P.M. – Susie B. Boyce Meeting Room – 44 Mountain Boulevard
April 13, 2015
APPROVED**

CALL TO ORDER Meeting was called to order at 7:38

FLAG SALUTE AND MOMENT OF SILENCE FOR OUR TROOPS

***Statement by Presiding Officer:** Adequate notice of this meeting was posted on January 13, 2015 on the Township bulletin board and sent to the Township Clerk, Echoes Sentinel and Courier News per the Open Public Meetings Act. All Board members are duly appointed volunteers working for the good and welfare of Warren Township. We plan to adjourn no later than 10:00 p.m.*

ROLL CALL

Mayor Marion (excused)	Mr. Freijomil (excused)
Committeeman DiNardo (excused)	Mr. DiBianca
Mr. Toth	Mr. Scuderi (excused)
Mr. Kaufmann	Mr. Gallic (arrived at 7:43)
Mr. Lindner	Mr. Villani
Mr. Malanga	

■ **Announcements:**
None

■ **APPROVAL OF MINUTES:**
March 9, 2015

Motion was made by Mr. DiBianca, seconded by Mr. Kaufmann to approve the minutes.

Roll Call

For: Mr. Kaufmann, Mr. Malanga, Mr. Toth, Mr. DiBianca, and Mr. Villani
Against: None.

■ **PROFESSIONAL STAFF REPORTS:**

Alan Siegel, Esq., Planning Board Attorney
John T. Chadwick, IV, P.P., Professional Planner --COAH
Christian Kastrud, P.E., Professional Engineer
Maryellen Vautin, Clerk

Mr. Chadwick discussed the latest decision of the Supreme Court on COAH. The township is assessing the rules as they evolve. There will be judges that will be trained as to what the rules will be. It is an ongoing issue and has been for twenty years.

■ **CORRESPONDENCE**

The New Jersey Planner January/February 2015

- **CITIZEN'S HEARING:** (Non-Agenda Items Only) Mr. Villani invited citizens' to address non agenda items, and seeing none, closed that portion of the meeting.

- **CASE No. 1** (carried from March 9, 2015)

PB12-06 Block 86.01, Lots 28.04, 29 & 30

Applicant: the Hollows at Warren

Phone 201-782-0292

Owner: The Hollows

Type: Prelim. Major subdivision

Engineer: Kevin Page

Attorney: Joseph Murray, Esq

PROPOSED: 9 lot major preliminary subdivision

A modified Plan had been included in packets

Mr. Villani invited Mr. Joseph Murray, representing the applicant, to come forward. Mr. Murray came forward and he discussed the ending of the last meeting and the board's discussion and suggestion to modify the plan and bring in one lot in the three acre area. Ms. Kathy Mueller from Page Engineering presented the new plan and the application was noticed.

Ms. Mueller came forward and was accepted by the board. Mr. Siegel stated they were still under oath from the last meeting (including Mr. Kastrud and Mr. Chadwick). The plans were last revised March 31, 2015 and were submitted to the board and are in the packets the board members received.

Ms. Mueller summarized the changes to the plan, there are nine proposed lots on the property. There were three lots at the end of San Road and one needed a lot area variance and a side yard variance. The revised plan has one lot in the 3 acre zone, and the other lots along the extension of San Road are all complying with the R-20V zoning SF. Proposed Lot H goes over the split of the zone line but the area within the zone area complies with the R-20V zoning requirements. One variance they are asking is on Lot I, they are asking for a 50 ft front yard setback, which would be the same as the rest of the neighborhood, it is 75 foot required. If Lot H is developed before I (per township ordinance) the prevailing setbacks rule and it will not need a variance. There are two lots out at Countryside Lane (instead of the one proposed earlier), they are in the R-20V and comply. The alignment and area of the road are the same as previously proposed. There are very minor changes to the engineering. They did realign the sanitary sewer that is flowing by gravity out to Mount Bethel Road so it aligns with the new lot lines and the easement is parallel to the lot line.

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They will service the end of San Road with gravity sewer as requested by the sewer authority. The utilities are identical. The one detention basin will be a grass bottom basin. Ms. Mueller went over the soil erosion plan and mentioned that it shows Phasing. There will be one lot in Phase 1, or it may be two lots on Countryside in Phase 1. The remainder of the project will be in Phase 2. The two lots on Countryside do not require any road improvements.

Mr. Chadwick clarified that the phasing plan on Sheet 5—will it be modified or not. Ms. Mueller stated they would like to modify to include Lot A and B in Phase 1. Mr. Chadwick also brought up the buffering on Mount Bethel Road. Mr. Chadwick went over his report from April 3, 2015 and one item under RSIS, a sidewalk is required within this development on one side of the street. It would not connect to anything and they may want to discuss a waiver on the plan. He also wanted clear direction on clearing limits and minimizing of cutting trees down. The homeowners association will be required for storm water control maintenance.

Ms. Mueller said they would be in favor of asking for the waiver of removing the sidewalk. They will add the clearing limit to the plans as part of the compliance package, the conservation easement will include all wetlands and they have applied to the DEP for buffer averaging they will include those buffers in the conservation easement. There will be additional landscaping along Mount Bethel. They are agreeable to setting up a homeowners association.

Mr. Villani then asked the public to come forward with any questions. Matt Saum came forward from 17 Hillcrest Blvd and he was sworn in by Mr. Siegel. Mr. Saum stated he understands that builders are going to build. He knows many residents will discuss traffic and he agrees it will increase. Mr. Saum is mostly concerned with water, the area is wet and knows the DEP has been on the property. Mr. Saum passed some pictures to the board members and it shows the area behind his house and in the area that was discussed about filling in the creek. The pictures were taken after a normal rainfall and it was sunny when taken. The pictures were marked into record as O-1. Mr. Saum feels it is needed, it should stay. Mr. Saum showed the board where the creek is on the plan. There was discussion on whether it is a man-made ditch or if it is a natural creek. There are eight photographs and they were taken by Mr. Saum on February of 2013. Mr. Saum stated that the creek is fed from the slope and during normal rainfall the creek is up to and greater than 18 inches wide, and the water on his own property that feeds part of the creek can get to 12 inches wide. If there are leaves in its natural path, it will back up like a dam. He asked if you fill in this ditch, and a house is built on it, where will the water go? And if the house is built up high, the water will wash him out and make the back a swamp and the two neighbors will be more affected.

Mr. Saum felt the plan (with one house and one lot) that was shown on an earlier plan had a house a little farther north and that would help. Mr. Villani asked Ms. Mueller to address the issue. They discussed the history and that it was a man-

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made drainage ditch on earlier documents. The DEP showed it relocated. They do have an LOI and the DEP agrees it is a man-made ditch. She went over that it flows along the property lines and is piped under the road and makes a 90 degree turn and heads north. They propose to pipe it from San Road to the other side of the proposed extension.

Ms. Mueller stated they are proposing a swale around the proposed house and the area will be cleared and grass maintained area. She went over the plan showing the flow.

Mr. Saum went to the plan and talked about the brook or man-made ditch and other parts of the plan. There was further discussion of the documents and what would be maintained and the flow of the water.

Mr. Gallic stated that the board does not have any purview on what is wetlands or state open water. The DEP dictates what the lines are and they have agreed that it is a man-made ditch, and it not state open waters.

Mr. Kastrud suggested to maybe keep a brook easement on lot C and on Lot B maybe just change the geometry to let the water leave the properties from the south and enter the subdivision and it will go through and go out to San Road.

Mr. Villani will rely on Mr. Kastrud to look at elevations and make recommendations to the applicant. The homeowner will also be notified that they can't fill in the ditch as it will have an easement with the property. The property owner will be responsible for maintenance of the ditch and language should be included in the easement document.

Mr. Saum stated that the residents would prefer the one house on Countryside and that the earlier plan left the ditch alone.

Mr. Villani went over the earlier plan concept and that the applicant wanted one house (where there could be two) and wanted to put another house into the 3 acre area. The lot does not have the area to put two houses and does not have the minimum of 1.5 acres for both houses.

There was discussion on the designation of 3 acre zones and the master plan in general.

Mr. Villani also stated the developer could take those two lots on Countryside and combine and put one house there.

There was discussion on Sleepy Hollow and Mr. D'Angelo and how he felt it was wet in the area of the proposed development.

Mr. Villani stated Mr. Kastrud and Mr. Chadwick will give suggestions and the applicant should agree. Ms. Mueller stated the relocation of the swale and keeping it in an easement along the property line is agreed.

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Mr. Chadwick also reminded the board on the wetlands and DEP, and the board is also bound by a lot of case law on the issue of traffic. If it is zoned for single family houses it will generate traffic and they have the right to do it. If the zoning does not permit it within the zoning ordinances, then traffic would come up as a topic.

Mr. Kaufmann also brought up that with Sleepy Hollow many experts came in on the Sleepy Hollow development and they did put the light up so people can turn left.

Marilyn Andrews from 3 San Road came forward and she was sworn in. Ms. Andrews is also concerned with the ditch and easement and how it will take water from her property. Where will the water go?

Mr. Kastrud stated it will go to the maintained ditch on east side of road and it will be in a conservation easement and run to San Road and will be collected by a storm sewer pipe and flow down through system out to the North. If the plans are followed, there will be no damming of water on Ms. Andrew's property. It will not be as much of a ditch but a swale, more gentle. There was discussion on a right of way and creating an easement to keep the area open for flow.

Ms. Mueller stated they are lower than the houses on Hillcrest. And per the law they can't dam the water from another property. It was suggested to have some language in the resolution to ensure and a note on the map to keep the plan as proposed.

Mr. Gallic brought up that between Lot D and E and that there is drainage pipe in there about ten feet down the road. He suggested a mandatory swale between those properties. Ms. Mueller felt a note on the plan for no impeding of the water flow would work. There was further discussion on common practices.

Ms. Andrews asked about the property staying graded going downhill (from Hillcrest). Ms. Mueller said they will be changing the grade, there are garage under for some and they will use the slope, but will continue flowing north (water). Mr. Lindner stated it looked like a 20 foot drop from Ms. Andrews property to the road. These swales would just be lawns and maintained by the homeowners.

Ms. Noreen Merainer came forward from 7 Isabella Way and was sworn in. She discussed the light at Hillcrest and the good and the bad. Sleepy Hollow was twenty one houses and now nine more are proposed. There is also an application for a medical office at the corner of Hillcrest and Mount Bethel. They stated there could be 50 cars a day in the future. Ms. Merainer is concerned with the light, the township should ask the county to check that light. Currently if exiting and trying to turn left, you have about 5 seconds and it allows two cars.

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Mr. Chadwick advised that the township is working with the county in phase 2 of a study of Mount Bethel Road from Rt 78 to the center of town. The signals will be rewired and phased and will have cameras and will go to a central station and could adjust real time in peak times.

Mr. Wojciech Krystek came forward and was sworn in and asked about repaving Hillcrest Blvd. There are many pot holes in the road and it has not been paved for many years, it is also narrow.

Mr. Gallic stated that they can check and see if Hillcrest Blvd. is on the list to be repaved. Department of Public Works works with the Committee every year to come up with the roads and finances for repaving. Mr. Villani felt some priority could be given to this road. Mr. Krystek asked where the access for construction will be for the new homes. Ms. Mueller stated it will be from San Road and none from Mount Bethel. Mr. Krystek asked about the landscaping and Ms. Mueller said most likely a wall over evergreens will buffer along the Mount Bethel side.

Mr. Saum returned and asked what the elevation was behind his property. Ms. Mueller said it is 484, and the house behind is first floor 489 and garage at 480. Mr. Saum went to the plans and went over some elevations. Mr. Saum's property is 484 and then goes to 482 and then 484, 486. The high point is 486 and the water is getting conveyed around. Mr. Saum is still concerned with his 484, and the other elevations at 486. Ms. Mueller went over the flow and stated it will flow around and continue around. Mr. Saum is concerned that it may not and then it would come down to his property instead. Ms. Mueller stated the ditch would remain and will work to keep flow moving. There was further discussion about the plans. Mr. Saum is concerned because new homes are built up and water does not go the way it was planned at times. Ms. Mueller stated it will be in a drainage easement and a defined swale that cannot be filled in.

Ms. Bridget Ameo at 39 Hillcrest Blvd came forward and was sworn in. She asked about the landscape plan around Mount Bethel. She is concerned because the trees that have been there probably over a hundred years give a good sound barrier and if they are taken down and smaller plants installed, it will take time to grow and be a good barrier. Ms. Mueller went over the house plans that back up to Mount Bethel, they are more than 75 feet off the property line and they will set the clearing limits, they generally try to keep established trees. They will supplement with evergreens. Some of the area is cleared already. Ms. Ameo brought up other parts of the property. A majority of the property/lots will be disturbed for regrading purposes.

Mr. Chadwick reiterated that the clearing limits must be shown on the plans and he will need to approve, he does not want unnecessary clearing. Most of the area on the north side of the property is in wetland area and will not be touched.

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Mr. Villani asked for a summary and Mr. Murray said they were complete. Mr. Villani then asked for the board to discuss. Mr. Kaufmann asked if there is a remediation process if there is a water problem after the homes are built. Mr. Kastrud stated that if the developer is still involved then they would be responsible, if not then the homeowner. It is why Mr. Kastrud asked for a drainage easement to ensure compliance with the plan. It also gives the right for the town to go on the property and correct and place a lien if necessary on the property.

Ms. Andrews asked about the homeowners association and if it would be a private property. Ms. Mueller stated the purpose of the homeowner's association is to provide for maintenance of the detention pond and it is a state requirement.

Mr. Villani closed out that portion and asked for anything further from the board. Seeing none, asked for a motion.

Motion was made by Mr. Gallic, seconded by Mr. DiBianca to approve the application with conditions.

Mr. Siegel went over the variance of 50 ft. front yard set-back for lot I, and conditions, Phase I will include lots A & B and other lots in Phase II, a condition for the easements for lots B & C, landscape plan for Mount Bethel, and a plan for clearing limits approved by Town Planner and Engineer, Request for waiver of sidewalk.

Roll Call

For: Mr. Kaufmann, Mr. Lindner, Mr. Malanga, Mr. Toth, Mr. DiBianca, Mr. Gallic, and Mr. Villani

Against: None.

There was a ten minute break, Mr. Villani called the meeting back into order at 8:55

Case No. 2

Reconsideration request for 123 Old Stirling Road, Sitrling Pond LLC resolution condition private vs public road.

Mr. Villani asked Mr. Murray to come forward and he did and spoke about earlier cases before the Warren Township board and how things have changed. He spoke about how before MLUL they could use reasonable planning, efficient planning, and it was nebulous, etc. The MLUL changed that. Mr. Murray stated that reasonable, or good planning could only be used if explicit ordinances were in place to use the standard of "good" planning. Warren Township's ordinance does not do that. Mr. Murray referred to a NJ Supreme Court case from 1994,

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Pisso Manti vs. Randolph. The applicant, or subdivider, sought to create a number of lots and came before the Planning Board. The Planning Board denied the application, the appellate division said no it can be approved because of the concept of reasonableness of the condition then imposed. The condition was the lot is too small. The Supreme Court took the position that you can't do that unless there was an ordinance that the permitted lot size is "x". He read from the case, at page 219, Justice Handler -this case concerns the scope of the authority of admissible planning board over subdivisions under the MLUL. The proposed subdivision relates to a large tract located in environmentally sensitive area. The appeal raises the issue whether the municipal planning board in deciding whether to grant an application for preliminary major subdivision that otherwise complies with the municipal subdivision and zoning ordinances may deny such an application based on consideration of "the general welfare, the purposes of the land use law, and sound planning". Because the municipality in this case later, after the application was filed adopted a new ordinance that created the lot size requirement. Then they were dealing with the time of decision ordinance, not time of application.

The important thing in this case, (of 1994 case) the board found that the subdivision complied with the subdivision ordinance and required no variances, the plan was fundamentally flawed, environmentally unsound, and unsuitable to the area as a whole.

The appellate division sent it back to the Planning Board. One month later the Township adopted an ordinance that would not permit it.

Any conditions imposed by a Planning Board must have a foundation in their ordinances at the time of filing of application. Mr. Murray continued reading from the case and went over the process to approve ordinances from the governing body, with a review by the Planning Board for consistency with the master plan. The governing body passes ordinance, and discussed the new ordinance that requires private roads.

The Planning Board did not use the new ordinance but a standard of vagueness that is pre-MLUL, and the application is not bound by the new ordinance. Mr. Murray finds it difficult that the municipality is seeking to have the standard of the private road as a condition. It is not within the authority of the Planning Board to do. He continued with RSIS standards and the board can ask for those.

Mr. Murray stated in this case (123 Old Stirling Road) the reasons they don't want the private road is that they have three houses and it would be up to the three homeowners to take care of the road. He suggested it would be difficult to work with the neighbors for maintenance, and buyers may not want to be in a neighborhood with a homeowner's association

Mr. Murray feels that in good conscience and consistent with the oath of office, apply the law as it exists to this application. No case has been presented contrary to this to support the town's position. There are costs if taken to court

and perhaps it is not a fair interpretation by the Planning Board of what is permitted.

Mr. Villani went over what has past on this case, and what they were caught up in. Mr. Villani felt that there was an agreement by the applicant that they would accept the private road, but weren't sure if it was conditionally accepted, or not. The board took the position that the applicant would accept it as a private road. The question came to do they have a right to enforce an agreement, or does the applicant have a right to withdraw an agreement. There was no conclusion on whether there was an agreement. It was not thought out to just let the applicant go to court, but they thought there was an agreement, and whether or not to go to court to enforce the agreement. Mr. Villani and the board decided along with the professionals there was not enough to go forward that there was an agreement.

Mr. Chadwick added that when the case started there was a cul-de-sac rule that precluded this kind of development. You had to have six lots. DCA had always said their rules don't cover six lots. Warren Township had pushed to get a letter from DCA and they came back and stated they do have jurisdiction over the whole cul-de-sac down to one lot. This was opposite of what Warren had heard from DCA in the past. That then prompted the public road vs. private road discussion. There is now an ordinance in place to deal with small subdivisions but was not in place for this (123 Old Stirling Road) case. It is now clear they (123 Old Stirling Road) don't want a private road.

Mr. Siegel added that he looked at case law and feels Mr. Murray's reading of Pisso vs. Randolph is correct. If there is no ordinance or statute that you can base the condition you seek to impose, you can't impose that condition without consent of the applicant.

Mr. Villani recapped the process the board went through. Mr. Gallic asked what the request is for now. Mr. Murray stated that it would be to take out the condition of the private road.

A motion would be to amend Resolution PB14-02 to delete the condition, paragraph 7a, the roadway be a private roadway. Mr. Murray wanted also to include any other correlated wording in the resolution that might be affected. (the homeowner association be created for the road, although would still be for the maintenance of the detention basin)

A motion was made by Mr. Gallic, seconded by Mr. DiBianca to amend the resolution.

For: Mr. Kaufmann, Mr. Lindner, Mr. Malanga, Mr. Toth, Mr. Freijomil, Mr. DiBianca, Mr. Gallic, and Mr. Villani.

Against: None.

■ **SCHEDULE OF NEXT MEETING:**

April 27, 2015

■ **ADJOURNMENT**

Mr. Gallic made a motion to adjourn, seconded by Mr. Kaufmann. All in favor.