

**WEST AMWELL TOWNSHIP  
PLANNING BOARD MEETING  
April 17, 2012**

The West Amwell Township Planning Board meeting was called to order at 7:30 PM by Chairman Tomenchok 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 Tomenchok: 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 26, 2012. Notice has been posted on the bulletin board at Town Hall on April 12, 2012, 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 Tomenchok: 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 Chairman 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  
Zach Rich  
Hal Shute  
Rob Tomenchok  
Chester Urbanski  
Joan Van der Veen  
Nella Hamtil – Alt. #1  
Attorney Shurts  
Planner McManus  
Engineer Burr

**Excused:** Ted Hills – Alt. #2

**Approval of Bill List**

A motion by Fisher, seconded by Urbanski to approve the vouchers for payment as listed on the Board's 4/17/12 bill list was unanimously approved by roll call vote.

**Resolution of Approval**

**Resolution PB#2012-08: Planning Board to Enter Into Executive Session for the Purpose of Discussing Potential Litigation**

A motion by Urbanski, seconded by Van der Veen to enter into executive session for the purpose of discussing potential litigation was unanimously approved by voice vote.

*The Board was in executive session from 7:33 PM – 8:38 PM*

A motion by Urbanski, seconded by Bergenfeld to return to open session was unanimously approved by voice vote.

*The Board took a 5 minute break from 8:39 PM – 8:44 PM*

A motion was made by Fisher, seconded by Bergenfeld to amend Ordinance 7, 2012 (Renewable Energy Facilities) Section III – Solar, Conditional Use Standards to allow solar facilities to be constructed on a minimum of 10 acres total land, 5 acre minimum per megawatt based on the current technology for solar panels with review of buffering and screening standards by the Board’s professionals. The motion was unanimously approved by voice vote.

**Applications**

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

**Unfinished Business - Other**

It was noted for the record that Chairman Tomenchok re-ordered the agenda to address a question Mr. Fulper had regarding his General Development Plan (GDP) and accommodate his schedule being that he was in between meetings this evening.

It was noted for the record that Mr. Shute recused himself from this discussion and stepped away from the dais because he owns a neighboring parcel to the Fulper land.

Attorney Shurts explained that Mr. Fulper’s GDP is good for 10 years (to July 2014) and contains a provision indicating he is entitled to a 10 year extension (through July 2024.) Attorney Shurts said Mr. Fulper had contacted him asking what the procedure was for obtaining that extension. Attorney Shurts commented that he believes a public hearing would need to be scheduled and noticed in order for the Planning Board to act on the extension. He provided the following background overview for the Board’s benefit since only Ms. Van der Veen and Mr. Shute were serving on the Planning Board when the Fulper application was first heard:

He explained the parcel consists of just over 600 acres and is broken into 5 farms:

1. Heifer Farm: Block 20 Lot 2 consisting of 139 acres
2. Home Farm: Block 21 Lot 38 & Block 13 Lot 45 consisting of 90 acres
3. Symonye South & Wargo South: Block 17 Lots 14 & 15 consisting of 120 acres
4. Stoy Farm: Block 19 Lot 5 consisting of 126 acres
5. Lenk Farm, Symonye North & Wargo North: Block 8 Lots 29.02, 32 & 33 consisting of 130 acres

Attorney Shurts explained that the Heifer Farm, the Home Farm and Simonye South & Wargo South have all been preserved. He noted that the Lenk Farm and Simonye North & Wargo North are the subject of the GDP which proposes 67 possible home sites on a configuration of two cul-de-sacs with two detention basins.

Attorney Shurts remarked that normally a GDP addresses a development plan but in this case the intention seems to be for Mr. Fulper to be able to maintain the status quo for as long as possible without forcing him into a position to have to develop.

Mr. Fulper commented that he was under the impression that when the GDP was granted it would cover 20 years and that he did not anticipate having to go through another public hearing unless he did not follow through on preservation or any other requirement of the GDP, which he noted was not the case. Attorney Shurts noted that there is a provision in the Municipal Land Use Law (MLUL) which indicates any extension of 5 years or longer requires a public hearing. Mr. Fulper stated that the first public hearing was noticed and the record was clear that the GDP was good for 10 years (through July 2014) with a provision allowing for a 10 year extension (through July 2024). Attorney Shurts noted that he will review the public notice requirement and render a decision on the matter.

### **Unfinished Business**

#### **Discussion – Section 109 Schedule 3 – Schedule of Permitted Uses**

Planner McManus reviewed her memo dated 4/6/12 which included comments and suggestions on the following uses:

1. Residential Uses
2. Commercial/Office Uses & Personal Services
3. Commercial/Wholesale/Retail Uses
4. Service Organization
5. Industrial Uses/Utilities
6. Recreational Uses
7. Educational Uses
8. Agricultural Uses

She explained that the intention of reviewing and updating Section 109 Schedule 3 is to provide clarification in the ordinance and to eliminate inconsistencies. Chairman Tomenchok suggested the Board determine who is going to move forward with Planner McManus's recommendations. It was noted that Mr. Haug will work with Mr. Baldino to review the recommendations and put the verbiage in place.

Ms. Van der Veen commented that the Board may wish to consider allowing mother/daughter dwellings given the state of the economy. Mr. Baldino agreed and remarked that he will work with Mr. Haug on establishing a definition for this type of housing. He noted that clear criteria would need to be implemented for the issuance of construction permits and the certificate of occupancy with possible language included in the property deed.

Mr. Bergenfeld asked for clarification on what would happen to the living area if the family member passed away. Several Board Members remarked that the area could not be used as a market rate apartment and said it could only be used for family. Mr. Baldino read the definition for mother/daughter dwelling contained in the current ordinance: "A portion of an owner occupied single family dwelling used for the purpose of providing living space for a maximum of two persons that may or may not be related. Such dwellings shall be permitted to have a separate bathroom, kitchen and bedroom and may also maintain its own entry way from the outside. However, at all times interior free flowing access from dwelling to dwelling must be maintained. Prior to the issuance of a certificate of occupancy for any such dwelling, a deed restriction shall be recorded restricting the

use of the dwelling unit to conform to the limitations specified herein.” Mr. Baldino remarked this definition was amended in 2004.

Planner McManus remarked that the Township should address whether or not a separate dwelling unit needs to be created in order to facilitate a mother/daughter unit. She explained that another option may be to allow property owners to construct additions to their homes that may include a living space without separate entrances which would then only require standard construction permits. Mr. Bergenfeld supported this suggestion.

**Discussion – Establishing an Inspection Escrow Fee – Status Update**

It was noted for the record that this matter will be carried to the Board’s May agenda.

**Discussion – SHREC Update**

Mr. Fisher noted that Mr. Campbell will be at next week’s Township Committee meeting to provide an update on the project and answer questions.

**Discussion – Master Plan Printing – Status Update**

Chairman Tomenchok noted that all of the Elements need to be formatted. Planner McManus indicated she can create a pdf file of the Master Plan and print out as many copies as the Board would like. She requested electronic versions of each of the adopted Elements be sent to her. It was noted that Ms. Andrews will provide this information to Planner McManus. The Board requested two hard copies of the Master Plan be printed: One for the Planning Board Office and one for the Clerk’s Office.

Planner McManus indicated, for budget purposes that if she determines this project will take longer than 2 hours she will contact Chairman Tomenchok.

**Discussion – Ordinance 7, 2012: Renewable Energy Facilities (*sent back to the Planning Board from the Township Committee*)**

A motion by Urbanski, seconded by Fisher finding Ordinance 7, 2012 consistent with the Master Plan and recommending adoption by the Township Committee was unanimously approved by voice vote.

**New Business**

**Discussion – Resolution #2012-55: *Opposing Assembly Bill A-1338 and Senate Bill S-743, Extending and Expanding Permit Extension Act of 2008* – (Comments Requested from the Planning Board)**

Attorney Shurts explained that the current Permit Extension Act does not apply to any project located within any environmentally sensitive areas but this new proposed extension will cover those areas and the League of Municipalities is against including environmentally sensitive areas. The consensus of the Board was that this matter is not applicable to West Amwell Township. Mr. Fisher indicated he will call the League of Municipalities to see if there is any further information and he stated he will make his opinion known to the State Legislators. Mr. Fisher commented that he will report back to the Board next month.

It was noted for the record that Attorney Shurts and Engineer Burr were excused from the meeting at this time, 9:47 PM.

**Discussion – Toll North Property Update**

Mr. Shute explained that he had previously brought up the idea of setting aside a portion of the commercial frontage of the Toll North property rather than having the entire parcel put into preservation. He indicated he contacted the County and remarked that they did not express any issue with the idea and suggested he speak

with someone from the State. Mr. Shute said he spoke with a representative who also happens to be a West Amwell Township resident. He explained that they then spoke to the head of the State Agriculture Development Committee (SADC) who agreed that based on where the property is located and what the zoning is that setting a portion of the Toll North land aside for commercial use makes sense.

Ms. Van der Veen asked if the SADC offered any opinion on whether or not this idea would jeopardize the current preservation application on this parcel. Mr. Shute remarked that Toll North still must be brought in on the idea and everyone would have to agree to the proposal.

Mr. Shute explained that the Highway Commercial zone actually goes 800' back from Route 179 on this property and he indicated he is suggesting a 600' portion be set aside with a 9 acre severable exception area. Planner McManus commented that she believes this is a good idea if the Township is able to retain their tax revenue by subdividing the frontage. She remarked that adjoining Lot 25 which has an existing residence on it will not be nearly as nice if the neighboring land is developed commercially but stated that at the end of the day the property is in a Highway Commercial zone. Ms. Van der Veen remarked that the owner of Lot 25 would have the right to purchase the 9 acre exception area if they were interested in doing so.

Planner McManus reminded the Planning Board of the affordable housing deadline in July 2012. She explained that if the money in the Township's Council on Affordable Housing (COAH) fund is not designated for use by July 2012 the State intends to take it to fill their budget gap. Mr. Fisher noted there is about \$137,000 in the Township's COAH fund and said that Barbara Walsh is presenting a plan.

Planner McManus explained the COAH money can be used for such things as buying land or setting up a contract with an affordable housing developer. Mr. Rich asked Planner McManus for her opinion on the Township giving money to a third party to purchase property. She said that is a good idea. Mr. Fisher remarked that Ms. Walsh recommended the Township get involved with a company called SERV. Planner McManus noted they are a good organization and encouraged the Township to set up an agreement so as to not lose their COAH money.

It was noted for the record that Planner McManus was excused from the meeting at this time, 10:18 PM.

### **Correspondence**

#### **Letter Received 3/27/12 by Zoning Officer Baldino, re: County Division of Health – Notice for Property on Rocktown-Lambertville Road**

Mr. Baldino commented that he received a notice of violation from the County Division of Health regarding property on Rocktown-Lambertville Road. He indicated a neighbor had apparently complained about a manure pile being too close to the property line. Mr. Baldino stated he thought the Planning Board should be aware of it.

#### **Right-to-Farm Proposed Language Changes**

Mr. Urbanski explained that Clerk Olsen had found a Right-to-Farm Ordinance from 1989 in her files that contains a hand written note that livestock and poultry should be included in the definition. He noted that the Township Committee met on 3/28/11 and forwarded it to the Agricultural Advisory Committee (Ag Advisory) who met on 4/5/12 and reviewed the matter. He explained Ag Advisory compared the language to the current Right-to-Farm Ordinance (109-64) and they suggested the language in (d) be changed to read: "The purpose of these rights is to produce agricultural products for example: Vegetables, grains, hay, fruits, fibers, wood, trees, plants, shrubs, flowers, seeds, livestock and poultry." He explained that Ag Advisory also believes that additional language be added to #5 on the back page to read: "Farm fields are private property. Trespassing while on foot, on horseback, on bicycle or in a motorized vehicle is strictly forbidden." He commented the reason Ag Advisory

believes this should be added is because people just assume that they can use farm fields for recreational purposes.

A motion by Fisher, seconded by Haug recommending the Township Committee make the suggested changes to the Right-to-Farm Ordinance was unanimously approved by voice vote.

**Open to the Public**

Chairman Tomenchok opened the floor to public comment. Sean Pfeiffer of 74 Rocktown-Lambertville Road came forward and commented that he had brought up the COAH requirements at a Township Committee meeting several years ago and was told that the Township is not in the real estate business and that COAH is going away. He said he remembers at the time the Township Committee was looking at some of the excess real estate inventory and he suggested creating COAH units out of them. Mr. Pfeiffer asked if any of the Connit Hill lots are available. Mr. Rich commented that one lot was sold and demolished. Chairman Tomenchok remarked that another problem with these lots is that many of the titles are cloudy.

Mr. Pfeiffer referred to the Fulper GDP discussion and asked if an escrow account had been established for this matter. Chairman Tomenchok remarked that the discussion was an informational session for the Planning Board. Mr. Pfeiffer commented that the Planning Board has always required land owners to establish an escrow prior to having any informal review take place before the Board.

**Approval of Minutes**

A motion by Haug, seconded by Rich to approve the Board’s open session minutes from 3/20/12 as revised was approved with Ms. Van der Veen abstaining.

A motion by Haug, seconded by Urbanski to approve the Board’s closed session minutes from 3/20/12 with no revisions noted was approved with Ms. Van der Veen abstaining.

West Amwell Township Planning Board Minutes – 4/17/12

**Adjournment**

A motion by Haug, seconded by Rich to adjourn the meeting was unanimously approved.

The meeting adjourned at 10:31 PM.

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Maria Andrews, Planning Board Secretary