

~~West Essex Highlands~~

**Resolution of Planning Board of the
Township of West Orange**

Denying an application for preliminary and final major subdivision for 136 single-family lots

WHEREAS, West Essex Highlands, Inc. having its principal office at 820 Morris Turnpike, Short Hills, New Jersey (hereinafter "Applicant"), being the owner of the property which is the subject of this application, being property located approximately 1600 feet from the intersection of Oval Road and Warner Road, West Orange, New Jersey, being Block No. 179, Lot 32 and being located in the R2 and R3 zones, applied to the Planning Board of the Township of West Orange for Preliminary and Final Major Subdivision Approval for 136 single-family lots, requesting no variances; and

WHEREAS, the Applicant presented proof that adequate notice of the application and the multiple hearings before the Planning Board of the Township of West Orange regarding said application was published in The West Orange Chronicle, one of the official newspapers of the Board; and

WHEREAS, the Applicant submitted proof of the service of notice of the hearing upon all property owners within 200 feet of the property; and

WHEREAS, the application was heard at the following public meetings of the Planning Board of the Township of West Orange: January 18, 2005, April 27, 2005, May 18, 2005, June 15, 2005, July 13, 2005, September 28, 2005, October 19, 2005, November 30, 2005, January 11, 2006, February 8, 2006 and March 8, 2006; and

WHEREAS, the Applicant made its presentation through Ronald Shimanowitz, Esq. of the firm of Hutt & Shimanowitz, attorneys for the Applicant, and its submissions included a Subdivision Plan prepared by John McDonough, Professional Planner, PPE Corporation, dated July 31, 2004; Storm Water Management Study prepared by Paul Anderson, PE, PPE Corporation, dated August 30, 2005; Traffic Impact Study prepared by Walter Lublanecki, PE, dated May 27, 2005; Environmental Impact Study, prepared by Paul Anderson, dated September, 2004; Revised Subdivision drawings dated April 14, 2005, November 30, 2005, and December 23, 2005 and numerous Exhibits marked A-1 through A-24 for the Record; and

WHEREAS, the Applicant presented and the Board heard the testimony of John McDonough, Madeline Wasilas, Paul Anderson, and Walter Lublanecki; and

WHEREAS, certain residents of the Township of West Orange objected to the Application and made their presentation directly to the Board and their submissions included the Report of William Gregor, PE, PP, dated January 24, 2006 and February 1, 2006; the Reports of Alexander Litwornia, PE, PP, of Litwornia Associates, dated October 6, 2005 December 6, 2005 and February 1, 2006; the Report of Amy Green dated February 7, 2005 and numerous exhibits marked O-1 through O-10 for the Record; and

WHEREAS, certain residents of the Township of West Orange objecting to the Application presented and the Board heard the testimony of William Gregor, Alexander Litwornia and Amy Greene; and

WHEREAS, other objectors to the Application included the Planning Board of the Township of Verona, having made its objections to the Board through its attorney Gregory Mascera, Esq., Bannon, Rawding, McDonald & Mascera; WE CARE, having made its objections to the Board through its attorney Herbert Waldman, Esq., Nagel, Rice & Mazie; The Condominium Association of West Essex Highlands, having made its objections to the Board through its attorney Richard Schkolnick, Esq., Ramsey & Berman, P.C.; and

WHEREAS, the Board heard the testimony of, considered the opinion of and reviewed the written submissions of Deborah Cerbone, the Board's consulting landscape engineer, dated January 10, 2006 and February 7, 2006; Leonard Lepore, PE, the Board's Engineer, dated March 30, 2005 and November 30, 2005 and Susan Borg, PE, PP, the Board's Planner, dated January 10, 2005; the Traffic Bureau of the West Orange Police Department, in an undated report signed by Police Officer Mastras #145; the Fire-Sub Code Official Matthew Serignese, dated November 9, 2004; December 21, 2005 and January 4, 2006; and Deputy Fire Chief Paul O'Connor; and

WHEREAS, all the facts and data contained in the submitted application and in all submissions and exhibits submitted to the Board by any and all interested parties and produced at a public hearing before the Board are incorporated as findings of fact of this Board as if set forth at length herein; and

WHEREAS, the Board having determined that it has jurisdiction to review and decide the matters brought before it by the Applicant;

NOW THEREFORE, does the Planning Board of the Township of West Orange make the following specific findings of facts and conclusions of law with regard to this application:

A. Applicant seeks Preliminary and Final Major Subdivision approval, with no variances, for 136 single-family lots at property which it owns, being property located approximately 1600 feet from the intersection of Oval Road and Warner Road, West

Orange, New Jersey, being Block No. 179, Lot 32 and being located in the R2 and R3 zones.

B. The property that is the subject of this application has been the subject of a variety of proposals for development and several years of litigation over its future development. The property is unique as within the Township of West Orange by virtue of, among other traits, its environmental characteristics, including the presence of isolated wetlands, steep slopes, mature trees, shallow depth to bedrock and the visually prominent ridgeline of the Second Watchung Mountain. Moreover, the property is one of the last, privately owned large undeveloped parcels of land remaining in the Township.

C. This application included a significant amount of evidence produced at the eleven (11) hearings, including testimony on many issues from the Applicant as well as from numerous objectors, including but not limited to, certain citizens of the Township of West Orange, certain citizens of the Borough of Essex Fells, WE CARE, the West Essex Highlands Condominium Association and the Planning Board of the Township of Verona.

D. The Applicant revised its drawings and submission on certain occasions during the course of the hearing in response to concerns raised by members of the public and certain objectors, specifically regarding emergency access to and from the subject property, the configuration of the internal road network on the subject property and their desire to eliminate the need for a *de minimus* exception to the Residential Site Improvement Standards (hereinafter "RSIS") for maximum daily number of vehicle trips on a cul-de-sac..

E. The Applicant seeks approval for an internal "boulevard style" roadway that includes fifteen (15) foot wide driving lanes on either side of the center divider. Based on the credible testimony of Mr. McDonough, Mr. Litwornia, Mr. Gregor, Mr. Lepore and Ms. Borg, and Deputy Fire Chief O'Connor, the Board finds that the fifteen (15) foot wide driving lanes do not conform with the intent of the pertinent Residential Site Improvement Standards (hereinafter "RSIS") nor do they provide ample space for safe and efficient use by emergency vehicles. In concluding that the proposed internal roads are not sufficiently wide, the Board find that the proposal jeopardizes the health, safety and welfare of the subject property and its residents by failing to provide safe and efficient road width for vehicles, impairing traffic flow and ability to turn around, particularly with respect to emergency vehicles.

F. The Board finds that, based on the credible testimony of Mr. Lepore and Mr. Litwornia, the Applicant failed to provide a graded right of way of adequate width between the street curb and the street right of way and as a result, the proposed plan does not meet the standards required pursuant to the pertinent Residential Site Improvement Standards. Moreover, if the Applicant were to restore the graded area in such a fashion as to comply with the RSIS requirement, a recalculation of lot areas and significant

revision to the subdivision plan would be needed to ensure compliance with the zone requirements.

G. The Applicant seeks subdivision approval for 136 single-family lots on a 120 acre parcel of land with only one access road – Warner Road, a two lane roadway - that connects to Oval Road, which then connects with Eagle Rock Avenue. The Applicant proposes three emergency access easements comprised of grass pavers rather than paved roads. The Board, based on the testimony of the Deputy Fire Chief, finds that the proposed grass pavers present maintenance difficulties, particularly in snow, that would impair safe, efficient and effective access by emergency vehicles. No satisfactory maintenance plan was presented to the Board to address the concerns raised Deputy Fire Chief and other interested parties that emergency vehicles would be able to efficiently, promptly and safely traverse the proposed easements in the event of an emergency.

H. Municipal Zoning Ordinances require a landscape buffer, of varying width between 75 and 110feet, along the perimeter of the subject property. Based on its review of the proposal and testimony of Mr. Gregor and Ms. Borg, with respect to other viable designs and locations being available for the layout and placement of certain features of the proposal, the Board finds that a majority of detention basin #1 encroaches into the buffer zone in contravention of the pertinent municipal ordinance. Moreover, the Board finds that the proposed Lot 14 appears to encroach into the buffer zone and that the utility easement along the southern edge of the subject parcel is entirely within the buffer zone also in contravention of the intent and spirit of the applicable zoning ordinance. The Board concludes that locating major components of the proposal's infrastructure substantially within an area intended to be an undisturbed buffer, violates the intent and spirit of the municipal zoning ordinance governing this site because there is credible testimony that other options existed for design and layout of these features without practical impairment to their effective use and function.

I. The Board concludes, based upon the testimony of Mr. Gregor, Mr. Litwornia, Ms. Borg, and Mr. Lepore, that the proposed 136 single family subdivision with only one access route and insufficiently wide roadways creates dangerous and inefficient vehicular ingress and egress to and within the site. The Board finds that having one way in and one way out of this subdivision jeopardizes prompt and efficient emergency response, particularly given the insufficient width of the roadways and the location and construction of the emergency access easements, and creates an inefficient and potentially unsafe vehicular flow. Additionally, the Board finds that a development of this magnitude having only one means of ingress and egress creates an inefficient network of roads that is contrary to the goals and intent of the Master Plan of the Township of West Orange, which encourages providing more than one road into and from a neighborhood rather than developing enclave type neighborhoods.

J. The Board finds the Applicant failed to provide an adequate count of the trees it proposes to remove from the site as required by the pertinent municipal ordinance. The Applicant's calculation that 7625 trees were to be removed was determined by counting

trees with a caliper of 6 inches or greater. The pertinent municipal ordinance requires trees with a caliper of 2.5 inches or greater to be utilized in the calculation. The Board finds, based on the testimony of Ms. Cerbone, that the Application as presented, failed to provide a sufficient tree plan as required by the municipal ordinance.

K. In total, the Board finds that the numerous deficiencies set forth on the Record before it are so fundamental that denying the application is more appropriate than subjecting the Applicant to conditions that once enacted would, in the Board's view, result in a substantially different plan than the one proposed by the Applicant in the present matter.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Township of West Orange, based upon the findings of fact and conclusions aforesaid, and upon the laws established in the State of New Jersey, that PB-04-24 be and hereby is denied.

I hereby certify that the foregoing Resolution was adopted by the Planning Board of the Township of West Orange at its meeting on April 5, 2006, and that said Resolution memorializes the action of the Planning Board taken at its meeting held on March 8, 2006, approving a motion to deny the referenced application by a vote of 5 for and 2 against.

A handwritten signature in dark ink, appearing to read 'Maria Abeles', is written over a horizontal line.

Maria Abeles, Board Secretary

April 5, 2006