

**MINUTES OF THE HARDYSTON TOWNSHIP PLANNING BOARD MEETING HELD
MAY 14, 2009**

CALL THE MEETING TO ORDER: Chairman Miller called the meeting to order at 7:30 p.m. and read the following Statement of Compliance.

STATEMENT OF COMPLIANCE: Pursuant to the Open Public Meetings Act, Chapter 231, P.L. 1975, adequate notice as defined in section 3D of Chapter 21 P.L. 1975, has been made to the New Jersey Herald and is also posted on the bulletin board at the Hardyston Township Municipal Building.

ROLL CALL:

Leslie Hamilton – Present
Ken Kievit – Present
Robert Neubig – Present
Robert F. Schultz – Present
William Hickerson – Present
John Monell – Excused
James Homa – Present
Brian Kaminski – Excused
Randy Roof (Alternate No. 1) – Excused
Carl Miller – Present

OTHERS PRESENT: Robert P. Guerin, P.E., P.P., Thomas J. Molica, Esq., Carrine Piccolo, Assistant Planner, and Anne-Marie Wilhelm, Land Use Administrator

ORDINANCE REVIEW: Chairman Miller stated the following ordinances were referred to the Planning Board as required.

TOWNSHIP OF HARDYSTON 2009-04, AN ORDINANCE OF THE TOWNSHIP OF HARDYSTON, COUNTY OF SUSSEX, STATE OF NEW JERSEY REPEALING SECTION 185-54(A) AND AMENDING AND SUPPLEMENTING CHAPTER 185, ZONING, SECTION 185-54, PERSONAL RECREATIONAL FACILITIES IN RESIDENTIAL ZONES, OF THE REVISED GENERAL ORDINANCES; and

TOWNSHIP OF HARDYSTON 2009-05, AN ORDINANCE OF THE TOWNSHIP OF HARDYSTON, COUNTY OF SUSSEX, STATE OF NEW JERSEY AMENDING CHAPTER 185, ZONING, SECTION 185-54, PERSONAL RECREATIONAL FACILITIES IN RESIDENTIAL ZONES, SUBSECTION(B) OF THE REVISED GENERAL ORDINANCES.

Carrine Piccolo, Assistant Planner, was sworn. With reference to Ordinance 2009-04, she stated that in response to concerns that the ordinance regarding swimming pools, tennis courts, and other recreational facilities prohibited such uses on lots less than 15,000 sq.ft., it was considered that the 15,000 sq.ft. was arbitrary. She stated that eliminating that requirement did not negate the other setback requirements for the zone.

Ms. Piccolo presented that a zoning permit was not required in the original ordinance regarding portable swimming pools less than three feet in height and ten feet in diameter. She stated the proposed ordinance utilizes construction code standards that require any pool/water container that contains more than two feet of water to have a building permit and a self-latching enclosure around it. She stated by having a fence requirement, a zoning permit is also required.

With reference to proposed Ordinance 2009-05, Ms. Piccolo stated the proposal addresses the current ordinance that prohibits a pool on a lakefront lot other than in the side yard. She presented the proposal as amending the Ordinance to allow lakefront pools.

Chairman Miller opened the meeting to the public.

Ms. Ruth Baker was sworn. She stated she strongly objected to the change in the ordinance. She stated she is a resident of Lake Tamarack, has lakefront property, and it is her front yard. She stated she did not want a pool in the front yard. She stated the fencing and accompanying shed would create clutter. She stated she objected to having to all of this garbage showing out in front so that when she is using the lake, she and her friends would have to look at the unsightly yards. She asked how the pool would be filled and emptied. She stated she did not want all the chlorine. She stated it is a beautiful lake and it should be kept pristine.

Mr. Bill Walsh was sworn. He presented that residents already have worries about septic system and oil tank ruptures into the lake. He stated if a pool ruptures on the lakefront, it will kill the fish. He asked what would happen to the neighbor's septic system if the pool ruptures. He stated these things worry him and he does not think it is proper. He asked where the pool water would come from. He stated Lake Tamarack has two tanks and will be fined if they take too much water. He stated restrictions are sometimes placed in the summer and the Fire Department has an agreement with the lake not to take too much water. He stated Lake Tamarack has installed a standpipe so the Fire Department can draft off the lake. Mr. Walsh stated everyone knows that to refill the pool in the summer, one will put a hose into the pool to fill it, even if it is not on the lakefront property. He stated the houses are close together and the pools would be an eyesore. He stated he does not see a reason to change the Master Plan now. He stated it seems to work. He stated he did not care about the 15,000 sq.ft. He stated he thinks that the pools at the lakefront are very dangerous.

Ms. Karen Lind was sworn. She stated she has a lakefront home and that Lake Tamarack is a unique lake with a little bit of wilderness and God's country. She stated to ruin it with pools on the little lots would be a disaster. She stated there are birds and herons and it is a pleasure to live there. She stated she echoed all the comments and hoped that pools on pristine lakes never happen.

Mr. Merle Baker was sworn. He stated Lake Tamarack has water allocation and he is on the Water Board. He stated the community is near the top of the allocation. He stated they were informed that the lake is in the Highlands and there would be no more allocation from the state. He stated by putting a couple of pools in, the residents would be over the allocation. He stated everyone on the Lake that uses the water would pay the fine if the community goes over the allocation. He stated the Lake went over the permit once. He stated there is a zoning law about sheds in the front yard. He stated sheds would pop up and fences are not permitted in the front yard. He asked if the whole ordinance would be changed so a few people could have pools. He stated he encouraged the group not to do that. He stated he agreed with the square footage revision.

Ms. Janet Thorsen was sworn and stated she agreed with what everyone said. She stated that the fish and the things that are worked on for the children to enjoy should be considered. She stated if there were a spill it would also affect another lake. She asked if a pool is that important. Ms. Thorsen noted the activities and teams that use the lake. She asked the Board to consider that pools are not near as necessary as keeping our wonderful lakes. She stated "we are the land of lakes."

Mr. Nils Thorsen was sworn. He asked – Who asked for this? Chairman Miller explained the procedure stating that the changes come to the Board for review from the Township Council. Mr. Thorsen asked – Who is the Council? Ms. Hamilton stated lake community members asked the Council for this. She stated the Council reviewed it and then sent it to the Planning Board. Mr. Thorsen stated he wished the Board much luck and wisdom.

Ms. Barbara Daniel was sworn. She stated she is a life-long resident of Lake Tamarack and would hate to see her community go the way of Deer Trail and Fawn Lakes that are no longer useable. She stated she is concerned about her water and the antiquated water system. She stated she is concerned about the drainage into the lake. She stated she swims in the lake from end to end and does not want to see fences and pools. She stated she wants to see the herons and snapping turtles and everything that is natural to the lake. She stated she does not want anything dumped in it. She stated to ruin it in this way would be a shame. Ms. Daniel stated that one expects people to behave in certain ways, that they will not dump or abuse, but they do. She asked the Board to help.

Ms. Alice Bresett was sworn. She stated she agreed with everything said and that she lives in Lake Tamarack and it is beautiful. She asked if the ordinance supersedes the by-laws. She stated the lake has by-laws about fencing. She also asked who is liable if a neighbor's pool leaks in to a septic. She asked if the Town would step in because of the ordinance. She stated that overall; she is opposed to pools,

especially in Lake Tamarack. Mr. Molica stated it was his inclination to believe that in the event there is no specific provision in the Homeowner's Association documentation regarding pools and their placement, the ordinance would control and is dispositive. He stated if there were a rule prohibiting pools or sheds in the by-laws, the person would need to amend the by-laws to apply for such a use.

Mr. Joseph Zirpoli was sworn. He stated he is a resident of Lake Tamarack and would like to reiterate everything said. He stated that putting large chlorine vats next to a lake may not be such a good idea because ecology is fragile and this should be considered.

Ms. Anne-Marie Wilhelm was sworn. She stated she is a resident of Lake Tamarack and that she agreed with everything everyone said. She presented that she called her homeowner's insurance agent and was informed that should someone's pool flood her lawn and septic, the homeowner's insurance would not cover the damages. She stated that if the party did not have flood insurance, she would have to pursue compensation legally. She stated this would ruin her establishment economically.

With reference to the community, Ms. Wilhelm stated the Township has been supportive of the community and in terms of economic sustainability; the community association would not last without this support. She stated that if the lake is abandoned by permitting the privatization of recreation so that people are not encouraged to support community recreation and activity, it jeopardizes the sustainability of the whole event. She stated you can see this in adjoining lakes where people want their own thing. She stated there is no incentive to maintain the common ground and the lake community environment declines.

Ms. Wilhelm stated that the very first page of the Master Plan shows Lake Tamarack and children playing together in the community organization, not in their private yards. She stated that aside from the kids, if her neighbor puts a pool in, here come pool parties, racket, radios, noodles, towels, the fences, and who knows what. She stated this impedes on her enjoyment of her property. She stated the design of the community has placed the recreation away from the residences. She explained that two beaches on each end reduce noise. Ms. Wilhelm also stated that the Township has invested in Highland's Plan conformance. She stated that in their plan, they state they intend to restrict the area. Ms. Wilhelm stated the Township is spending money to get compliance but is looking at an ordinance which does not appear to be consistent with community vision and the Township's efforts to obtain conformance with the larger picture.

Ms. Barbara Pfeifer was sworn. She stated she is a resident of Lake Tamarack. She stated she understands that the ordinance does not apply to the lake only. She stated she would hate to see the lake be hurt. She stated people can be careless. She stated they are an eyesore. She stated when storms come, they can overflow. Ms. Pfeifer asked the Board to consider it all as a whole.

Chairman Miller closed the meeting to the public. Mr. Miller stated that he is the Chair of the Zoning Board of Adjustment and it has always been the view that the lakefront lot and the view is a sacred right. He discussed an approval granting a variance that allowed a lakefront pool for medical reasons. He stated that the approval requires the pool be removed when conditions change.

Robert P. Guerin, P.E., P.P., stated the primary objective of the referral to the Planning Board is to have the Board determine consistency with the Master Plan. He stated one of the goals and objectives of the Master Plan is to retain the natural features and amenities that give the Township its rural character. He further stated another objective of the Master Plan is to preserve and enhance the existing established rural character and recreational character of the Township. He stated he did not believe the ordinances were consistent.

Board members discussed the matter and procedural issues. With reference to Ordinance 2009-04, Chairman Miller asked for clarification of §185-54.C. Ms. Piccolo presented a revision that would read . . . *adequate screening so as not to adversely affect adjoining property owners shall be required for said use if located within 20' of the property line.* Mr. Molica confirmed that the smallest permitted lot is 15,000 sq.ft, and a lot that is less than 15,000 sq.ft. would be nonconforming. Mr. Guerin noted that if a person has a 10,000 sq.ft. lot and the current 15,000 sq.ft. lot size requirement is removed, if the person meets 15' on either side, he could get a pool. Mr. Guerin stated he was inclined to retain the 15,000 sq.ft. requirement because it clarifies everything. He stated that when provisions are put in to allow an undersize lot to do something without going to the Zoning Board of Adjustment, you are creating a potential for a problem.

With reference to the proposed removal of the 15,000 sq.ft. minimum lot size requirement, Ms. Piccolo stated it was removed to address the existing nonconforming lots and people that are in a community where they have the smaller lot and can not have the pool. She stated that the feeling was if they could meet the setback requirement, they could have a pool. Chairman Miller stated that the removal of the 15,000 sq.ft. removal implies that you do not need to comply with other sections of the ordinance. Mr. Molica inquired why one would not have to comply with every other bulk requirement and not minimum lot size. Ms. Hamilton suggested that it be left in.

In the matter of Ordinance 2009-04, Chairman Miller stated that the recommendation would be to put the 15,000 sq.ft. lot area back in and change the wording of Section C. as stated by Ms. Piccolo. Mr. Molica stated he would rephrase and state that Ordinance 2009-04, in the form referred, is inconsistent with the Master Plan. He stated that the language of §185-54C as rewritten is acceptable and the definition change is acceptable. He stated that eliminating the minimum lot sizes is not acceptable and it is inconsistent with the Master Plan. The motion was made by Ken Kievit and seconded by Robert Neubig. Roll Call: Ken Kievit – yes; Robert Schultz – yes; William Hickerson – yes; James Homa – yes; Leslie Hamilton – yes; Robert Neubig – yes; Carl Miller – yes. The motion carried.

In the matter of Ordinance 2009-05, Mr. Molica stated the finding would be that Ordinance 2009-05 is inconsistent with the Master Plan because of the reasons discussed by the Board and the public. The motion was made by William Hickerson and seconded by Robert Neubig. Roll Call: Ken Kievit – yes; Robert Schultz – yes; William Hickerson – yes; James Homa – yes; Leslie Hamilton – yes; Robert Neubig – yes; Carl Miller – yes. The motion carried.

ADJOURNMENT: A motion to adjourn was made by Ken Kievit. All were in favor. The meeting concluded at 9:30 p.m.

Minutes respectfully submitted by:

/s/ Anne-Marie Wilhelm

Anne-Marie Wilhelm
Land Use Administrator