

**KINGWOOD TOWNSHIP
BOARD OF ADJUSTMENT**

**November 12, 2014
MINUTES
7:30 PM**

M.L. Haring, chairperson, called the meeting to order, at 7:30 pm.

PRESENT:

D. Hewitt
M.L.Haring
P. Stepanovsky
B. Wilson, sec
D. Pierce, atty

C. McBride
C. Ostergaard, alt
J. Laudenbach
T. Ciacciarelli

ABSENT:

L. Frank.

In order to ensure full public participation at this meeting, all members of this Board, and members of the public are requested to speak only when recognized by the Chair so that there is no simultaneous discussion or over- talk, and further, all persons are requested to utilize the microphones which are provided for your use by the Township. Your cooperation is appreciated.

The 48 hour requirements of the Sunshine Law have been met. Notice of this hearing has been advertised in the Democrat. Copies of this notice were posted in the Kingwood Township Municipal Building and filed with the Municipal Clerk. The Board of Adjustment proceedings close at 10:30 pm.

MINUTES:

The October 8, 2014 minutes was approved with a motion by D. Hewitt, seconded by C. Ostergaard. On roll call to vote.

**Aye: C. McBride, J. Laudenbach, D. Hewitt, P. Stepanovsky,
T. Ciacciarelli, M. L. Haring, C. Ostergaard**

Abstain: None

Absent: L. Frank

RESOLUTION:

None

NEW BUSINESS:

None

OPEN TO PUBLIC:

None

COMMUNICATIONS/REPORTS:

Kingwood Township Minutes for September 15, 2014.

D. Hewitt made a motion to appoint David Pierce from the law offices of Lindabury, McCormick, Estabrook & Cooper for the year 2015, seconded by P. Stepanovsky. On roll call to vote.

**Aye: C. McBride, J. Laudenbach, D. Hewitt, P. Stepanovsky,
T. Ciacciarelli, M. L. Haring, C. Ostergaard**
Abstain: None
Absent: L. Frank

John Barczyk- Zoning Violation the Board received.

D. Pierce stated that the question is that the Board asked Mr. Barczyk to appear tonight so that they could ask him questions about the letter he wrote regarding Mr. Crance/Delaware River Tubing.

M.L. Haring stated that Mr. Battimelli is being brought into that as well.

John Barczyk – Yes.

M.L. Haring – Why is he being brought into this as well?

John Barczyk – Because he's the property owner.

John Barczyk – Back in January he met with Mr. Crance regarding his business going out of the Frenchtown Roller Rink and at that time he explained to him that he would need to get approval from the Board for that activity – he was aware of that. Issues came up with the Roller Rink and they decided not to renew his lease there so he started to look for other locations. Mr. Barczyk met with him in January and April and at that time he was explained that with every property that he would find in Kingwood Township some sort of Board approval would be needed, because the uses that he is doing on a property was not specifically permitted in our ordinance. He came up with the Shack location, 1121 Route 12, which is BL 6, L 21, in the HC Zone and was explained that his particular use is not permitted and he needed to get approval from the Board. Mr. Crance was aware of that and Mr. Barczyk was aware of his position trying to find a location. Mr. Crance did open there and was issued a summons because he didn't get the proper approval. The court summons is still open and he has delayed it for the entire season. The violation goes to the tenant and the property owner and that's where they stand at this point.

M. L. Haring – If Mr. Battimelli is ready to open in December, he can just open The Shack?

John Barczyk – He has no violation of him opening The Shack. The violation is for the tubing business opening without prior approval. If The Shack opens it also creates a second issue if he's going to allow two businesses to operate in 2015. There then would be two uses on the property which requires relief. He's not operating at the moment but his buses are parked there. There are structures on the property with no permits. Mr. Barczyk hopes he will come before the Board to obtain the proper approval.

M.L. Haring asked David Pierce if he wants to continue using that location is that going to make for a new application for The Shack?

David Pierce – No.

M.L. Haring – The Shack can continue its business but Mr. Battimelli, as the landowner, is part of the variance to run the tubing.

David Pierce – Correct.

M.L. Haring - If that is denied, it doesn't infringe on The Shack being opened.

David Pierce – Correct.

John Barczyk – We have two summonses here. Have to deal with what happened in 2014 and the court will make that decision, the second is that the court is going to weigh very heavily if this Board grants him approval to use that property. Some people are not in favor of him operating there, that's not the point, the point is does he have Board approval or not.

M.L. Haring – From what we hear the people are not in favor of him operating his business anywhere and that's not right.

T. Ciacciarelli – So nothing has been adjudicated.

John Barczyk – No. The court date is next Thursday. He feels the court will delay it pending on the result of this Board.

M.L. Haring - For the 2015?

John Barczyk – 2014.

C. McBride – He doesn't see how that can happen because of the filing and everything we might not have any conclusions until March.

John Barczyk – 2014 is over but he does believe that some fine should be issued because he did not follow the proper procedure. This needs to be resolved before 2015 comes up so we do not have this issue again.

John Barczyk feels he will ask for an interpretation or appeal his decision.

M.L. Haring – Keep us in the loop about this before next months meeting.

John Barczyk what's happened before is that Mr. Crances attorney has always delayed, so nothing has happened of him applying for the variance.

M.L. Haring – We need to have a report every month on what's going on.

John Barczyk – OK.

M.L. Haring – Let Barbara know. Put it in her in box-just let her know so that she can keep the Board informed.

John Barczyk asked the Board if they are aware of the one coming up with Chris's Citgo next Thursday. He has not completed all the conditions of the approval and it's gone beyond the two year period (actually 2 ½ years). They are trying to get him to finish the project and get the approval for the engineer to sign off on it. He has run into hard economic times. He needs to come in and request an additional extension or re-apply.

David Pierce stated that in the Resolution he had two years to complete.

David Pierce – You have problems with the Resolution?

John Barczyk - It will be difficult to enforce. He has a very busy operation there.

T. Ciacciarelli – Not only that, you can't sit there all day waiting and watching.

John Barczyk – David Moskal had a towing business on Oak Grove Road. His neighbors are still complaining that he's doing activity. They went through court and an agreement was granted. The neighbors still complain, and an investigation he had - he concurred. This has been going on for 6, 8, 9 months now. It's coming back to the court. He (John Barczyk) is trying to get the court to state that he can't have any type of towing activity there at all.

C. McBride – Are all the variances that we grant have that two year provision?

David Pierce – If it part of putting in improvements they generally do.

C. McBride – The Habitat for Humanity variance we granted that is also two years old.

David Pierce – That's dead and the variance is no longer valid. You don't want to grant variances that sit out there for decades.

C. McBride – Where does that leave us with Affordable Housing?

David Pierce – We still don't have guidance from the state.

D. Hewitt – Back to The Shack you mentioned that there are some structures- what's considered a structure? He had some portable tents put up but thinks most of those were taken down. But if they were up all year does that constitute a structure?

John Barczyk – A tent is a temporary structure and not permitted to be up all year. Tents are only allowed to be up for 180 days. DRT put up a couple of sheds that require a permit.

John Barczyk – He heard that the concerns were regarding the traffic, the water issues and sanitation seem to be the main environmental issues.

C. McBride asked about the location that the buses are parked is it asphalt or the field?

John Barczyk – The field.

C. McBride – Is the parking enough to support both businesses?

John Barczyk – He don't know.

John Barczyk – He has no site plan and that's why it's important to have a site plan for this Board to look at.

John Barczyk asked if it is appropriate to ask the Board what their opinion is.

David Pierce stated that the Board should not discuss any of the particulars of the operation because it presumably might be the subject of an application before this Board.

John Barczyk – He wants them to apply.

David Pierce stated that a cease and desist would not come from the Board, it would come from the court or the township.

David Pierce stated that he's beyond the time that he could appeal Johns initial denial.

C. McBride mentioned the buses on the property.

David Pierce stated that if The Shack opens then you have two uses on the property again with the buses stored there.

C. McBride – Couldn't the Shack be summoned?

David Pierce – He believes so.

T. Ciacciarelli – Is the violation \$1,000 per day?

John Barczyk – He believes so and everyday a separate violation.

John Barczyk – His goal is to get this resolved before June of next year.

M.L. Haring – In the event that we do get a new application we would want you present (John Barczyk).

David Pierce stated that he received a voice mail two weeks ago stating he would call back – he never did.

John Barczyk mentioned Ken's Auto Body.

David Pierce stated that he received a call from his attorney and informed him that he would need to fill out an application for a “Pre-existing non conforming use certificate”.

The Board secretary stated that Mr. Johnson will be at the December meeting.

John Barczyk will give the Board updates.

ADJOURNMENT:

D. Hewitt moved to adjourn, seconded by J. Laudenbach. All in favor. Meeting adjourned at 8:08 PM.

**Barbara Wilson
Secretary
Board of Adjustment
Kingwood Township**

