

MINUTES

PRESENT: J. Abel
J. Burke
R. DeCroce
J. Lutz
J. Mathieu
S. Rawlyk
J. Strasser
J. Harabedian, Alt. #1
L. Herrighty, Alt. #2

ABSENT: D. Haywood
T. Siano

CALL TO ORDER

The meeting was called to order at 8:04 PM by J. Lutz.

NOTIFICATION

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.

Notification of the time, date and place of this meeting has been published in the Delaware Valley News and Express Times and sent to the Hunterdon County Democrat, and has been posted in the Kingwood Township Municipal Building at least 48 hours prior to this meeting and has been filed with the Municipal Clerk.

NEW AND PENDING MATTERS

Approval of Minutes

It was moved by J. Strasser, seconded by L. Herrighty and carried to approve the minutes of September 13, 2005 and place on file. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Harabedian, who abstained.

It was moved by J. Strasser, seconded by J. Burke and carried to approve the minutes of September 13, 2005, Executive Session, and place on file. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Harabedian, who abstained.

It was moved by J. Strasser, seconded by L. Herrighty and carried to release the Executive Session minutes of September 13, 2005. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Harabedian, who abstained.

Resolutions

It was moved by L. Herrighty, seconded by J. Strasser and carried to adopt **Resolution No. 2005-24 – Barbieri - Block 28, Lot 9**. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Harabedian, who abstained.

It was moved by L. Herrighty, seconded by R. DeCroce and carried to adopt **Resolution No. 2005-25 – Perrotti, Block 7, Lot 14.10**. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Harabedian, who abstained.

Applications

Deer Run (FKA) Frenchtown Run – Block 12, Lot 31 – Determination of Completeness

J. Mathieu inquired if the application being presented was through D'Angelo Construction. F. Wisniewski, attorney for the applicant, responded Mr. J. D'Angelo is a member of the property owner's company. J. Mathieu stated the board members received a letter from D'Angelo Construction to J. MacConnell, dated September 26, 2005, written by D. Sanders. F. Wisniewski responded D. Sanders, is a part of the team. J. Mathieu stated he is not aware of any of the facts but the Planning Board has never had an application before them with correspondence such as this. Was it intended to impact our design or standard that the board would not be otherwise subjected to? F. Wisniewski stated the letter was intended to inform the board of the circumstances occurring at the Township Committee meeting. J. Mathieu stated the letter was not an appropriate thing to be in the board's package. The interaction was between a private resident, true or untrue, and a representative of D'Angelo Construction.

J. Lutz stated the board should not get into a discussion with the audience. There is a lot of hostility attached to this application. The Board's role is to hear it and make a decision in accordance with the law and the information available to us.

D. Pierce stated the letter has no place in the consideration of the application. The letter is not a verified statement and it would be inappropriate for the board to consider the letter. It would be inappropriate, in the ultimate presentation of the application, for Mr. Sanders or any one from the public to make reference to this type of incidence. It is a private matter between those individuals and should not have any impact on the consideration of this application.

J. Lutz stated the matter is scheduled this evening for a determination of completeness and as such not open for public comment. Public comment would be proper at the time of the actual hearing.

F. Wisniewski stated the hydrological reports and pump test data were submitted in mid-September to the Township. In September, the Township adopted another ordinance relative to the affordable housing plan for the third round. They have submitted the affordable housing production plan. Our plan is to make a payment in lieu of construction.

D. Pierce stated, with the respect to the Affordable Housing requirement, the Township adopted a new ordinance for the third round requirements for the COAH share. It provided as a condition of completeness of a development application, an Affordable Housing Plan would have to be submitted. He received, by fax, a copy of their plan with the indication they intend to make a contribution in lieu. With respect to the well test report, the applicant has provided a report. There is a technical issue on which the Board will have to make a determination this evening. Section 4.4 indicates the post pumping recovery analysis was terminated when the well had achieved 88% recovery. The ordinance requires a 90% recovery. The ordinance requires, as a

completeness item, both hydrological testing and pump testing be performed, as per the well ordinance. The report does not comply with the testing as required by the health code. The Board has two alternatives, it can grant a waiver from the strict requirements of the well ordinance or the board could take a very strict interpretation of the ordinance and indicate that the testing was not completed as required by the ordinance, so the application is not complete at this time.

J. Lutz commented, with all the negative facets attached to this application, the board should require the applicant to adhere to the ordinance.

J. Abel commented he has examined the report and the report describes the failure to complete the recovery portion of the test due to a miscommunication between the drillers and the person performing the test. The equipment was dislodged prior to the completion of the testing. The Board needs to require the test be completed according to the ordinance. The report concludes there is more than adequate water on the site and the well yields were substantial.

R. Lorentz stated there is a strong indication recovery would occur. There was substantial recovery after the pumping was stopped.

D. Pierce indicated the report has been sent to the hydrologist.

F. Wisniewski stated the Board is not making a decision on the well testing tonight. The applicant can perform another test for the one well prior to the public hearing. He cannot see how anything is going to be impacted by scheduling the matter for a public hearing. The applicant is requesting a waiver of the required testing for completeness but not from the requirement the applicant performs the testing.

J. Lutz stated with all the challenges possibly resulting from the application, the board intends to require the applicant to conform to the current ordinances and their requirements.

D. Pierce stated a completeness determination is an appealable decision of the board. Someone opposed to the application can appeal the determination. The applicant would need to complete the required test and obtain another determination of completeness. The application will probably be heard prior to the appeal being heard. The board can deem the application incomplete by reason of the non-compliant well test or grant a waiver from the construction of the well requirements of the ordinance.

It was moved by J. Abel, seconded by L. Herrighty and carried to determine the well test incomplete due to the failure to perform the pump test. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by J. Mathieu, seconded by J. Burke and carried to determine the application incomplete due to the applicant's failure to properly perform the pump test. All members present voted **AYE** on **ROLL CALL VOTE**.

D. Piece stated there are no other completeness issues pending.

R. Lorentz stated the storm water management report and documents previously submitted have some omissions. Hunterdon County Planning Board has reviewed the report and have disapproved the application based on deficiencies in the report. The applicant intends to revise the report. It is not a reason for a determination of incomplete application. For the County Planning Board, the report, as it has been prepared, is not approvable in the submitted form.

D. Pierce stated the important point Mr. Lorentz' made is our ordinance simply requires the submission of the plan, it does not detail, in the checklist, what needs to be in the plan specifically or by reference to another section of the ordinance. It would be inappropriate to deem the application incomplete by that reason. The deficiencies of more information will be addressed at the hearing.

J. Abel stated the impact report is inadequate.

R. Lorentz stated he has not reviewed the report in detail. It will be the board's concern after testimony has been given.

J. Abel stated, to the applicant, the impact statements will have to be expanded. They are quite simplistic.

Township of Kingwood – Proposed Ordinance #13-13-2005

D. Pierce stated the proposed ordinance is an amendment to the third round COAH fair share ordinance, which exempts from the requirement to make a contribution to the Fair Share Housing for the development of a single family dwelling on a lot in existence as of September 6, 2005 or approval for a Class I subdivision, provided the subdivision has not been part of any subdivision for three years. A Fair Share Housing Plan must be submitted but not accepted as a condition of approval. The requirement is one affordable housing unit for eight new units. The numbers being discussed are \$240,000 for one unit, which would about to \$30,000 per lot or \$60,000 for a two lot subdivision.

J. Abel stated the development fees remain in these units. Any major subdivision before the board must provide the \$30,000 figure or a plan to provide the required affordable housing units.

D. Pierce indicated the original ordinance required 1% of the assessed value. All lots are subject to that fee. The proposed ordinance deals with the third round fair share obligation of one affordable housing unit for every 8 new units or on non-residential units. The proposed ordinance exempts existing lots and future one or two lot subdivisions to every three years for additional requirements. For every four minor subdivisions of two lots, the township would have to create one COAH obligation and would receive the development fee and no other contribution from the developer for one unit.

D. Banish is the special planner to the governing body working on COAH matters. Class I minors are exempted as long as one is only taken every 3 years. The development fee is 1% of the assessed value, 1/8 share of producing an affordable dwelling. A fee is currently being charged when a building permit is issued on an existing property. Under the old regulations, there was liability and exposure to the taxpayers. COAH increased the fee from .5% to 1%, plus the non-residential fee. They added a provision to the rules to allow for a growth share provision. The Township has adopted a growth share ordinance which may result in substantially larger portion of contributions. The growth share ordinance intensifies the creation of affordable housing. It is more advantageous for a developer to create a unit, rather than pay the fee in to the COAH fund.

It was moved by L. Herrighty, seconded by J. Strasser and carried to recommend the adoption of proposed Ordinance No. 13-13-2005 to the Township committee. All members present voted **AYE** on **ROLL CALL VOTE**, except R. DeCroce and J. Mathieu, who abstained.

Limitation of Comments

J. Lutz stated since he has been Chairperson for a little over a year now, when the meeting is open to the public comment section, some people might be cheated out of time they would have liked to comment because someone was taking a little longer with their comments. I would like to request the Board adopt a policy limiting comments from the public to five minutes. There are some comments, under privilege of the floor, where someone is presenting a proposed application. If they wish to discuss a particular project, they should request to be listed on the agenda.

D. Pierce stated when the meeting is opened up for privilege of the floor for people to make comments to the board for an application, it would not be appropriate to limit time for the presentation of testimony that either the applicant can present or someone opposing the application, can present. The limitation would only be applicable to the privilege of the floor section of the meeting.

It was moved by J. Mathieu, seconded by J. Harabedian and carried to adopt a five minute per person comment period under privilege of the floor. All members present voted **AYE** on **ROLL CALL VOTE**.

Master Plan Recommendations

D. Banish stated a meeting was held on June 21, 2005. The Board requested a series of ordinances. He distributed to the board an ordinance amendment which identifies three different changes: the elimination of the lot size averaging provisions, providing for a minimum lot circle area and the requirements for farm and agricultural use site plan applications.

Discussion between the board members and a polling of board members resulted in no action required for buildings under 5,000 sq. ft.

D. Pierce stated the board may want to consider a tiering provision, exempting anything under 5,000 sq. ft., requiring a minor sketch plan for buildings 5,000 to 10,000 sq. ft., and a full blown sketch plan for any building over 10,000 sq. ft. The application fee could be set at \$350.00 and be subject to the payment of escrow fees, which may be determined by square footage.

D. Banish stated the board addressed the problem of lot size averaging in subdivisions. The board can eliminate that provision by providing for minimum improvable lot area and minimum lot circle requirements. The above provisions will insure every piece of the landscape gets committed to a lot. The above provisions would eliminate irregularly shaped lots. Every time you put restrictions into place, it narrows the number of qualifying lots. In the ideal world in the planning circle, it would be to retain large contiguous tracts of farm land and to obtain contiguous environmental constrained land. The planning process is developing at a different pace than the development of the township. Is four acres the right zoning for the township? The hydrologist will possibly come back with a recommendation. Development is continuing as a pace in the community. A lot of the sample ordinances require mandatory open space set asides and restrictions. A possible scenario is to put the developer through a four acre conventional plan saying they are entitled to 20 lots. The Board sees there is good farm land on the tract, along with a stream corridor, features the board would like to see held open. The Board can require the preservation of 50% of the tract area as a farm lot, 30% of the unconstrained land be set aside in the open area and the nineteen remaining lots will have to be placed, on a smaller scale, somewhere on the tract. An economically viable farm should be a minimum of 20 acres in size in the northeast.

The Board questioned if a larger lot size is defensible in a challenge. D. Pierce responded he is reasonably sure the board can require seven acres and survive a challenge.

D. Pierce stated there are a few basic concepts or ideas that are implicated: the four acre lot size may not be determined to be for a subdivision. The Board should not wait for the perfect ordinance. Without any restrictions, a developer can go down to two acres. The Board could draft an ordinance that requires a minimum contiguous developable area, free of constraints, adopt a lot circle requirement, that can be separate and apart from the developable lot area or layered on top, or the lot circle area needs to be developable as well. The issues before the Board, is to proceed to draft the recommended ordinance that deals with those issues and eliminates lot size averaging. The ordinance can be amended at a later date to provide for lot size averaging for a cluster of three or four acre lots. Does the Board want to have flexibility in circumstances to say to the applicant, you present a conventional subdivision but after review by the Board, the Board feels it appropriate to allow a greater density due to the value of the preservation of the land in open space or farmland and allow the applicant to lot size average or cluster?

D. Banish stated, as a result of the discussions this evening, the board would like to retain the flexibility to allow lot size averaging or clustering, see six to seven acre zoning, minimum improvable lot area and minimum lot circle requirements.

D. Pierce stated in regard to clustering, the applicant has to provide a conventional plan and the board, at their discretion, may impose clustering.

Well Ordinance

D. Pierce stated the Board of Health is considering a change to the well ordinance in regard to interference testing. He suggested it would be appropriate for Ms. Althoff to review the ordinance and provide recommendations to the Board of Health.

It was moved by J. Mathieu, seconded by J. Strasser and carried to authorize Ms. Althoff to review the well ordinance and provide recommendations to the Board of Health. All members present voted **AYE** on **ROLL CALL VOTE**.

Special Meeting Dates

A special meeting was scheduled for October 25, 2005 beginning at 8:00 PM. D. Banish will provide a draft ordinance for the board's review that evening.

CORRESPONDENCE

J. Lutz reviewed as per the agenda.

PRIVILEGE OF THE FLOOR

A. Hauck, Spring Hill Road, commented on lot size and lot size averaging.

J. MacConnell, Spring Hill Road, commended the Board on their recommendation of seven acres.

S. McNichol – regarding availability of the hydrologist report at the Board of Health meeting.

OTHER MATTERS

ADJOURNMENT

It was moved by J. Strasser, seconded by J. Harabedian and carried to adjourn the meeting at 11:05 PM. All members present voted **AYE**.

Respectfully submitted,

Diane Laudенbach, Secretary