

MINUTES

PRESENT: R. Dodds
 D. Haywood
 W. Kastning
 T. Kratzer
 J. Mathieu
 E. Niemann
 T. Siano
 J. Strasser
 S. McNicol, Alt. #1
 L. Senus, Alt. #2
 T. Decker, Engineer
 D. Pierce, Attorney
 A. Clerico, Planner
 D. Banisch, Planner

ABSENT: J. Burke

CALL TO ORDER

The meeting was called to order by J. Mathieu at 8:01 PM.

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 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 W. Kastning, seconded by R. Dodds and carried to approve the minutes of May 8, 2007 and place on file. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Strasser, who **ABSTAINED**.

Resolutions

It was moved by T. Siano, seconded by D. Haywood and carried to adopt **Resolution No. – 2007 – 16 – DeSapio – Block 6, Lot 9 – Ridge Road – Extension of Time**. All members present voted **AYE** on **ROLL CALL VOTE**, except R. Dodds, W. Kastning, T. Kratzer, S. McNicol and L. Senus, who **ABSTAINED**.

Applications

Laura Properties – Block 8, Lot 25.01 – Lower Oak Grove Road – Request for Extension of Time

G. DeSapio, attorney, was present for the matter this evening. The County Planning Board requested the applicant to perform a storm water study on two previously subdivided lots, which have been conveyed to third parties. The applicant is in discussion with the County as to the reason for the need for the study. The present resolution expires in July. He is requesting a six month extension of time to file the deeds.

It was moved by D. Haywood, seconded by T. Siano and carried to grant a 190 day extension of time to file the deeds. All members present voted **AYE** on **ROLL CALL VOTE**, except W. Kastning, T. Kratzer, S. McNicol, J. Strasser, who **ABSTAINED**.

Lazarek – Block 8, Lot 7.01 – Oak Grove Road – Request for Extension of Time

G. DeSapio, attorney, was present for the matter this evening. He has just received the matter from Mr. Rylak. He has reviewed the file and it appears as if all the conditions have been addressed. He has dropped off a duplicate set to the secretary today. He is requesting a 120 day extension of time to file.

It was moved by D. Haywood, seconded by T. Siano and carried to grant a 120 day extension of time to file the deeds. All members present voted **AYE** on **ROLL CALL VOTE**, except R. Dodds, W. Kastning, T. Kratzer, who **ABSTAINED**.

Kenney – Block 27, Lot 6 – Hammar Road – Request for Extension of Time

G. DeSapio, attorney, was present for the matter this evening. He is requesting a 90 day extension of time to file the deeds. A conservation easement needs to be provided for the wetlands area. The deadline for filing the deeds expires on July 18, 2007.

The Board discussed who the grantees should be for the conservation easement. They expressed a concern of a possible change to the easement without Planning Board approval. D. Pierce stated the easement would contain language that would require any desire to amend or extinguish the easement be approved by the Planning Board. The policy decision by prior boards was that the Township did not want the responsibility. The language would provide the Township with the right but not the obligation to enforce the easement.

D. Banisch commented on monumentation for the wetlands. G. DeSapio stated that was not a condition of the original approval and would be a very costly process for the applicant. He offered to attach a reduced copy of the approved subdivision map to the conservation easement, which would indicate the easement. G. DeSapio agreed to provide a CAD drawing of the application.

It was moved by T. Siano, seconded by J. Strasser and carried to grant a 90 day extension of time to file the deeds. All members present voted **AYE** on **ROLL CALL VOTE**, except W. Kastning and T. Kratzer, who **ABSTAINED**.

Tumble Partnership – Block 32, Lots 10 & 11.02 – Tumble Idell Road – Request for Extension of Time

J. Sordillo of DiFrancesco, Bateman, Coley, Yospin, Kunsman, Davis & Lehrer, attorney, was present for the matter. The applicant is requesting a 180 day extension of time to file. The applicant is having difficulty contracting with a hydro geologist. They contacted the Township engineer and he provided some suggestions. The new hydro geologist is starting to commence work on the well testing and it should be completed by September 30, 2007, providing they do not encounter any problems. They do not have County Planning Board approval. There was a delay because of an error in the application before the County Planning Board. The County Planning Board had the old prior plans and not the revised plans. The matter is being rectified.

S. McNicol inquired if the plat shows the wetlands boundary or the buffer boundary. J. Sordillo stated he will obtain the answer.

It was moved by W. Kastning, seconded by J. Strasser and carried to grant a 180 day extension of time to file the deeds. All members present voted **AYE** on **ROLL CALL VOTE**.

Galleria Construction – Block 39, Lot 7 – Barbertown Idell Road – Determination of Completeness

W. Robertson of Miller, Robertson, Rogers, attorney, was present for the matter. The application requires no variances.

T. Decker's review of the application indicates:

Item #1 – Electronic Copy of Plan

An electronic copy of the proposed plan has not been approved.

Item #12 – Lot Numbers Approved by the Tax Assessor

Our office has not received confirmation from the tax assessor that the proposed lot numbers have been approved.

Item #21 – Contours and Topography within 200 ft of the Subject Parcel

The applicant has depicted topography within 200 ft surrounding the subject parcel and contours for an average distance of approximately 25 ft surround the property.

Items #31 - 34

Planning board secretary should confirm if these items have been provided.

Item #37 – Steep Slope Mapping

The submitted plan does not depict the steep slopes that may be present on site. Based upon our cursory review of the on site topography, it appears that little, if any, steep slopes exist on site.

Item #38 – Stormwater Management Plan

This information has not been provided at this time. However, it should be noted that no improvements are proposed at this time.

Item #45 – Affordable Housing Plan

This information has not been provided at this time.

Item #48 – Freshwater Wetlands Within 150 ft of the Property

The plans depict the wetlands information for the subject parcel only. The location of wetlands, outside of the boundary of the subject parcel have not been provided.

Item #51 – Depiction of Septic Systems and Wells within 100 ft

The plans depict wells within 100 ft of the subject parcel, however there are no septic systems indicated within this boundary. If there are no septic systems located within 100 ft of the boundary of the subject parcel, the applicant's engineer should testify to same.

Items #52 - 54

Our office has not received confirmation of submittal of this information therefore we ask that the township clerk please confirm that this information has been provided.

S. Norkevich stated:

- # 1 – Will provide;
- #12 – In the process;
- #21 – Will provide the contours beyond the property lines;
- #37 – Will note on plat;
- #38 – The applicant has received a letter from the D&R Canal Commission indicating the application was located in Zone "B".
- #48 – Was performed by another surveyor and he will contact him for the information and they will be depicted with their buffers;
- #51 – Stated there is one well, Lot 9, located within 100';

B. Casuscelli, applicant, stated he has not provided Item #34 or #45.

S. Norkevich also stated he has applied for an LOI.

W. Robertson stated he will discuss the affordable housing requirement with his client. He will probably make a payment in lieu.

D. Banisch stated the applicant can come up with an Affordable Housing Plan which might include an accessory apartment. The unit can be attached or over a garage. It would be deed restricted for 30 years. D. Pierce stated the Growth Share Ordinance contains a provision that allows multiple family units in any residential zone in the Township to comply with COAH requirements. After the 30 year restriction, the municipality could make a payment to maintain the restriction or a condition that requires the abandonment of the unit after 30 years.

Also mentioned was the lack of the results of the permeability testing. S. Norkevich will provide.

D. Pierce stated the 10% ownership disclosure for Galleria has not been provided.

It was moved by S. McNicol, seconded by J. Strasser and carried to determine the application incomplete. All members present voted **AYE** on **ROLL CALL VOTE**.

E. Niemann recused herself from her position on the Board for the following matter.

Laurelton Belmont – Block 22, Lot 16 – Barbertown Point Breeze Road – Amended Preliminary Major

Approval – Discussion;

William Robertson of Miller, Robertson, Roger, representing the applicants.

D. Banisch stated his report is based on the original approval. He was not aware an amended approval had been granted allowing the applicant to have access to Hammar Road. He requested the Board to disregard his comments.

W. Robertson stated there was a 2006 amendment to the original application and an amending resolution was adopted. The amendment was for the relocation of the access. The application, approved in 2006, was for a 13 lot subdivision with two cul-de-sacs. Subsequent to the 2006 approval, the DEP issued an administrative order expanding the buffer for the Category 1 stream. The applicant revised the plan to be consistent with the buffers. Two of the lots are being lost and the cul-de-sac is being moved. The revision is minor in nature and should be treated as an amendment to the 2006 approval.

T. Decker agreed with W. Robertson. He stated the Commissioner of the DEP, in January of 2007, issued an order regarding the outer 150' of the special resource protection area which impacted the eliminated lots. The application currently creates a common driveway to serve three lots. It is permissible in the township and would be the obligation of the three property owners to maintain. It will replace the cul-de-sac, which originally served five lots. The total net decrease, from the original proposed development, has been five lots.

D. Pierce stated if a common driveway is being proposed, a variance is necessary for the issuance of a building permit not abutting a public road. W. Robertson responded the applicant can propose a slightly longer cul-de-sac which would not require a variance. D. Pierce stated the loss of the two lots is due to DEP regulations and the cul-de-sac elimination is based on discussions with the Township engineer. T. Decker stated he thought the board might be in favor of the common driveway.

D. Pierce reviewed for the Board the history of the application. The original application was for a total of 16 lots and was dependent on access from Barbertown Point Breeze Road. The applicant received preliminary approval for that design. When the applicant applied to the DEP for its wetlands delineation and permits, the DEP indicated they needed to obtain a different access than originally proposed. The DEP would not grant any permits for access from Barbertown Point Breeze Road. The applicant negotiated with the adjacent property owner and obtained an agreement with the property owner for a boundary line adjustment. The application was reconfigured for 13 lots with access solely from Hammar Road. There was no discussion on the traffic impact on Hammar Road. The Board was concerned with storm water management issues.

D. Nenna, applicant, stated the original development proposed twelve morning trips and sixteen evening trips from the property. He stated there was a traffic study completed for the original project.

W. Kastning was concerned with the impact the development would have on Hammar Road due to its narrow character. J. Mathieu stated it was never discussed. W. Kastning stated when a subdivision application is before the Board and a feeder road is inadequate, the developer should widen the road to handle the additional traffic.

W. Robertson stated the Board should be guided by the language in the 2006 resolution. The resolution stated specific findings that found the amendment not to be a substantial change. The applicant is proposing an amendment to the interior access, a reduction in the lots, less impervious coverage and a reduction in density. The changes should be considered minor in nature.

D. Nenna stated it has been a four year process. The DEP is ready to issue the wetlands permit. If the Board changes anything in the application, he will have to reapply to the DEP.

T. Decker stated a variance would not be required for those lots because they each have a flag staff reaching to the interior road. D. Pierce responded a variance is required because the Class II minor is only allowed on road frontage existing as of April 30, 1996.

J. Symonds stated the detention basin has the same depth but has been reduced to 50% of the original size.

D. Pierce stated there is very little guidance in terms of what constitutes a substantially new application. There is one case in COX in which the court deemed the application contained a substantial change. The application had received prior approval but then returned and added another 28 acres to the application. In his experience the court would look at the proposed changes. The 2006 amended resolution dealt with the access issue. He stated it would be difficult to convince a court the current application is a substantial change, since there is a reduction in the development and no expansion of the area being developed. There are certain ordinances the applicant will have to comply with dealing with public safety and health. The Fire Company has reviewed the application and is requiring a 20,000 gallon fire protection tank be installed. In terms of whether it should be considered a new application, the court would not support that determination.

D. Nenna stated he has procured the site triangle on one side and is procuring the site triangle on the other side of the road.

J. Symonds stated the wetlands detention area is 4' to 6' deep. The maximum depth is 6'. The drainage is in two different sections of the site. The upper site uses the basins and the other section uses the bio-swales. Close to the basin, it uses grass swales and goes into the basins. The bio-swales infiltrate. The system is designed for the 2, 10 and 100 year storms. He will be speaking with the DEP tomorrow to make sure the application complies with the new regulations. According to the Storm Water Management Regulations, a maintenance manual will be filed with the deeds and be the responsibility of the homeowners' association. The southern and eastern portions of the property contain a conservation easement, which has been deeded. The conservation easement is a wetlands area requiring a 50' buffer, except along the stream. There is an LOI for the area. The map and LOI have been filed with the Board. D. Pierce stated if the DEP does not require conservation easements on all the wetlands on the lots in question, the Board should require it.

D. Nenna stated the plat has not been submitted electronically but it will be completed.

The Board members were polled and determined the application was an amendment to an existing application.

Laurelton Belmont – Block 22, Lot 16 – Barbertown Point Breeze Road – Final Major – Determination of Completeness;

D. Pierce stated the application lacks a variance application for the flag stem on a public road not existing as of 1996. Based on the Board's determination, the waivers requested for the hydro geologist report and pump testing, the affordable housing plan, qualifying plan and steep slope mapping are not applicable. The applicant was not required to comply with the new ordinance because of the prior approval. The application cannot be determined to be complete because it requires a variance. The appropriate waivers are referenced in T. Decker's memo. The correspondence referenced is a letter dated May 15, 2007 from Laurelton Belmont.

T. Decker's review of the application contained the following comments:

Item #1 – Electronic Copy of Plan

An electronic copy of the proposed plan has not been provided.

Item #31 – 35 – Tax Certification, County Planning Board Subdivision, Soil Conservation

Planning Board Secretary should confirm submission of appropriate administrative documentation.

Item #37 – Steep Slope Mapping

Mapping of steep slopes have not been provided on the submitted plans.

Items #40, 41 & 42 – Deed and Plat Certification

The applicant has requested waiver for these items, an explanation of requested waivers can be found in correspondence referenced above.

Item #43 – Hydrogeological Report and Pump Testing

The applicant has requested waiver for these items, an explanation of requested waivers can be found in correspondence referenced above.

Items #44 – Executed Escrow Agreement

The applicant has requested waiver for these items, an explanation of requested waivers can be found in correspondence referenced above.

Item #45 & 46 – Affordable Housing Plan and Qualifying Plan

The applicant has requested waiver for these items, an explanation of requested waivers can be found in correspondence referenced above.

Item #55 – Estimated Cost and Improvements and Performance Bond

The applicant has requested waiver for these items, an explanation of requested waivers can be found in correspondence referenced above.

With regards to the Final Major Subdivision Application, the applicant has requested waivers from the following items:

Items 40, 41, 42 – Deed and Plat Certifications**Item 55 – Performance Guarantee**

D. Pierce stated there needs to be a completeness review on the variance application.

It was moved by J. Strasser, seconded by W. Kastning and carried to determine the application incomplete. All members present voted **AYE** on **ROLL CALL VOTE**.

E. Niemann resumed her seat on the Board.

Equestrian Village – Block 12, Lot 31 – Discussion of Hydro geologist

D. Pierce requested the matter be listed on the agenda. The Board made a decision to retain V. Uhl as their hydro geologist for 2007. Up until that point, the Board was relying on P. Althoff to review the well testing for the above referenced application. Does the Board want to continue with P. Althoff or change to V. Uhl? T.

Hauck stated M. Zdepski has followed the requests of P. Althoff in regard to the testing and he would recommend the application's review continue with P. Althoff.

After a brief discussion, it was moved by J. Strasser, seconded by S. McNicol and carried to continue with P. Althoff for the review of the above referenced application, with V. Uhl reviewing the final report, at the Board's expense. All members present voted **AYE** on **ROLL CALL VOTE**.

Board Comments

The above was requested by J. Burke and will be carried over to next month.

Private vs. Public Roads

S. McNicol requested it be placed on the agenda for discussion. S. McNicol is concerned about the cost to the homeowners for the maintenance. D. Pierce stated the Class III common driveway and minor subdivisions were a way to open up and make more useable the backlands for residential purposes. The roads are improved according to the RSIS standards. The maintenance is applicable to all the owners of the lots that front on the driveway. The owners share in the maintenance of the driveway. It prohibits substantial improvement of the driveway unless all the owners consent. The agreement provides for a dispute resolution and collection of costs of maintenance if one of the owners does not comply. There is a provision of giving the Township the right but not the obligation to maintain the driveway. The Township is permitted to assess the cost against the property owners. There has only been one issue, with one of the first ones, where the owner of one of the lots decided to put a fence in the ROW, which has nothing to do with the maintenance of the common driveway. In speaking with the zoning officer, there was one property owner who wanted to get out of the common driveway. In order for that to occur, the owner must have the approval of the other property owners, as well as the Township. The Use and Maintenance Agreement is recorded in the County and enforced by the homeowners. The options open to the homeowners are court action or binding arbitration. The agreement provides for the prevailing party to recoup their legal fees and costs. The agreement is individual to each application. D. Piece stated it is the intentional policy of the Township that it does not want to assume responsibility for the cost of the maintenance of the detention basins. The homeowners' association is required to maintain the basins. A lot of the requirements are governed by State law and are reviewed by my office to make sure all the conditions of approval are appropriately incorporated into the agreement. Each owner of a lot is required to subscribe to the homeowners' association document. The Use and Maintenance Agreement is filed with the county registrar. There is a copy in the township's subdivision file. The Class II was created to allow development of the backlands at a relatively minimal cost to the applicant. The reduction in cost allows for those lots to be sold for a lesser price than they would have been sold previously or as part of a major subdivision. It is a presumption, if those lots were part of a major subdivision, they would be a higher cost on a per acre basis. It is fair when you are essentially giving a subsidy.

J. Mathieu stated the Class III minor subdivisions allowed people to develop the backlands and in exchange for that it is a private road. There are not that many in the Township and if they started maintaining, costs would add up. He is reluctant to have the Township take them over.

Minor Subdivision Notice Requirements

D. Pierce stated there was a questioned, at the last meeting, regarding public notice and public hearings for minor subdivisions. The MLUL allows for a public hearing on any application before the Board. In past practice, minors are minor and the imposition of additional costs was not desirable. If the application required a variance, notice would be required.

After some discussion, it was moved by R. Dodds, seconded by S. McNicol and carried to require public notice and hearing for Class II minor subdivisions. All members present voted **AYE** on **ROLL CALL VOTE**.

Submission Deadlines

D. Laudenbach requested the Board to have a policy of a 10 day deadline for items to be placed on the next agenda.

After some discussion, it was moved by J. Strasser, seconded by R. Dodds and carried to require submissions for the next month’s agenda be in 10 calendar days before the meeting, with the ability of the chairman to make exceptions. All members present voted **AYE** on **ROLL CALL VOTE**.

PRIVILEGE OF THE FLOOR

J. MacConnell thanked the Board for their thorough review of the applications.

E. Schmid commented the microphones are not working well. M. MacConnell responded the Board members have to speak directly into the microphones in order for them to work properly. They do not pick up sounds from a distance.

Resolution No. 2007-17 - Executive Session

RESOLUTION NO. 2007- 17

WHEREAS, Section 7 of the Open Public Meetings Act, Chapter 231 P.L. 1975 (R.S. 10:4-13) permits the exclusion of the public from a meeting or a portion of a meeting of this public body in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist;

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Kingwood, County of Hunterdon and State of New Jersey as follows:

- 1. The public shall be excluded from the meeting or a portion of a meeting at which this public body discusses the hereinafter specified subject matter.
- 2. The general nature of the subject matter to be discussed is as follows:

Legal Matters

- 3. The time when the circumstances under which the discussions conducted in closed session of this public body can be disclosed to the public is as follows:

The minutes of the closed session will be made public upon conclusion, dismissal or settlement of litigation; or final resolution of agreements or personnel matters; and in any event, when appropriate pursuant to N.J.S.A. 10:4-7 and -13.

- 4. This resolution shall take effect immediately.

5. The Planning Board may take additional action upon returning to regular session.

It was moved by W. Kastning, seconded by T. Kratzer and carried to adopt the foregoing resolution at 10:27 PM. All members present voted **AYE** on **ROLL CALL VOTE**.

The Board returned to regular session at 10:48 PM.

CORRESPONDENCE

J. Mathieu reviewed the correspondence.

PRIVILEGE OF THE FLOOR

Fire Protection Tank

T. Kratzer questioned about the 20,000 gallon fire tank. J. Mathieu responded it is for onsite fire protection and the Fire Company is responsible for the filling and maintaining.

ANJEC Grant

D. Banisch stated ANJEC offered a \$7,000 grant, requiring a \$3,000 match from the Township for the Conservation Plan Element and update to the ERI. His firm will draw up a Grant Agreement. The draft Conservation Plan will be ready in July.

ADJOURNMENT

It was moved by R. Dodds, seconded by T. Kratzer and carried to adjourn the meeting at 10:54 PM. All members present voted **AYE**.

Respectfully submitted,

Diane Laudenschach, Secretary