

MINUTES

PRESENT: R. Dodds
D. Haywood
P. Lubitz
J. Mathieu
S. McNicol
E. Niemann
L. Senus
J. Strasser
M. Synchron, Alt #1
D. Banisch, Planner
T. Decker, Engineer
D. Pierce, Attorney

ABSENT: T. Kratzer

CALL TO ORDER

The meeting was called to order by R. Dodds at 7:31 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 Hunterdon County Democrat and Courier News, 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

Block 9, Lot 24 – Window World – Route 12 - Graphics Permit

R. Blankenship, owner of Window World, was present this evening. He is requesting approval to erect a sign on the above property. The existing sign is in disrepair and not located in the appropriate area. He is taking the current sign down and reinstalling a new one. He has received zoning approval.

D. Pierce stated the professionals do not have an opportunity to review requests for graphics permits. A graphics permit requires a permit to be issued by the Planning Board. The Board would rely on the zoning officer's recommendation of approval.

It was moved by J. Mathieu, seconded by P. Lubitz and carried to grant a graphics permit for the installation of a sign for Window World on Block 9, Lot 24. All members present voted **AYE** on **ROLL CALL VOTE**.

Block 15, Lot 4.03 – Garden Solar – Slacktown Road – Discuss proposed shelters

W. Wilson, attorney from Lebanon, New Jersey, was present for the request this evening. He is here this evening, with Tim Ferguson, member of Garden Solar LLC and C. Nusser, engineer. He has a copy of T. Decker's letter of March 1. There are two issues in the letter indicating the changes being requested this evening were not substantial but significant enough the professionals felt the Board should review them. He is seeking the Board's concurrence that the changes are not significant enough to require an additional public hearing. The applicant is waiting for D. Banisch's review. The applicant is now showing three equipment shelters. Originally, concrete pads were planned with the equipment placed on the pads. Under the final construction drawing, the pads have become smaller but the applicant is taking the equipment and putting a shelter over it. It is a pre-fabricated shelter brought on site in one piece and placed on the pad. He provided the Board with a representative photo of the shelter. The shelters that will be installed on the property will not have air conditioning units mounted on them. The shelter is 9.5' tall which is lower than the maximum height of the solar panels. The applicant does not feel air conditioning is necessary due to the fact that the inverters will not generate enough heat. There will be ventilation but no air conditioning. T. Decker stated the shelters will be 14'x28'x9.5'. C. Nusser indicated there will be fixed louvers on the shelter for venting. W. Wilson stated this is the type of shelter the actual operator of the proposed unit is using on other sites. There will be a fire extinguisher provided inside of each door. There is no fire hazard because not enough heat will be generated by the inverters.

In response to a Board member's inquiry that the revised site plan indicates the shelter would be 11'x50.5', T. Decker responded, when the applicant created the construction documents, the shelters were 14'x28'.

W. Wilson stated the issue the applicant takes exception to is with the final design of the actual arrays. The actual arrays will still be within the same envelope but shuffled a bit. There are wider aisles in some places. The design was configured with how they laid out on the site for the final topography and orientation of the sun.

C. Nusser stated he does not anticipate any type of sound proofing on the shelters. W. Wilson stated there were no sound issues if they were open.

T. Decker stated the purpose for his comments and the applicant appearing this evening is that he would not want someone from the Board or public seeing the three 14'x28' shelters popping up and not having been aware of them. There is no increase in impervious coverage. The layout has been adjusted per the specifications of the firm installing the arrays. They are slightly different than the original ones proposed. They have doubled up the panels, created some wider aisle ways and adjusted some of the layout due to the concerns of the fire official. The decommissioning plan will need to require the removal of the shelter as well as the pad under it. Garden Solar is not constructing the facility. W. Wilson responded RMT is the actual contractor. T. Decker stated the construction documents are the same as the site plan. The sheet numbers have changed and those plans are dated February 21, 2011. His review was on the preliminary plan dated February 18, 2011. Once they satisfy their conditions of preliminary approval, he will compare the two sets and make sure they have satisfied all the conditions. The construction documents have more detail for the actual construction of the arrays and racking system.

D. Pierce stated the arrays would be subject to taxation. T. Decker stated they fall under the definition of a building.

T. Decker stated the applicant has provided an updated geotechnical report which supports the details for the anchoring mechanism. The applicant has doubled up on the arrays and has additional posts for support. W. Wilson indicated the arrays have not increased in height. T. Decker stated the applicant still has conditions they have to satisfy. They are working out the details with the fire department. Once they have all that revised, he is requesting they put the resolution on the plans as well as signage notes. W. Wilson stated the electronic version will be provided after everything is in final form.

In regard to access to the property, W. Wilson stated there will be a knock box system as well as a tag. The issue of access is more related to the fire department and the de-energizing of the system. The applicant is working with the fire department on increased gate size, aisle size, addition of a gate and compacted lane around the perimeter, which the applicant has denied to do. They are very close to having the issues resolved.

If the concerns of the fire department cannot be satisfied, the applicant will have to come back to the board and request specific relief from the concerns of the fire company.

D. Pierce stated the Board needs to determine if the changes to the racking system and shelter are significant enough to require another public hearing.

It was moved by J. Mathieu, seconded by S. McNicol and carried to determine that the changes to the racking system and shelter are significant enough to require a public hearing.

ROLL CALL VOTE:
AYES – Mathieu, McNicol
NAYS – Dodds, Haywood, Lubitz, Niemann, Senus, Strasser, Synchronick
ABSTAIN – None
ABSENT – Kratzer

D. Pierce stated the resolution requests the applicant to construct as per the provided plans. The resolution also provides that T. Decker can approve minor field changes and deviations. It is his understanding that T. Decker thinks these are minor changes but because it has a visual aspect to it, he wanted to advise the Board. The Board has the prerogative to request the site plan be amended and require another public hearing.

It was moved by E. Niemann, seconded by D. Haywood and carried to determine that the changes to the racking system and shelters are not significant enough to require a public hearing. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Mathieu, who **ABSTAINED**.

Route 12 Corridor – Proposed draft Ordinances

D. Banisch stated the proposed scenic corridor protection along Route 12 is as a result of the survey in which the community identified the need to protect the scenic qualities of Route 12. The proposed plan was to locate future non-residential development on the eastern end of town. The plan provided for the development of non-contiguous clustering and long term TDR (Transfer Development Rights) for properties along Route 12. After an evaluation that two step approach is not feasible at this point and time. An alternative strategic approach is to adopt design standards for Route 12. The zoning would be left in place as it is today. The design standard will be away from the highway to maintain the scenic quality of Route 12. It can be achieved with some management in place for the Time of Application deadline in May. The design standards would not change the development rights and not draw any

lightening from any landowners. Ordinance amendments would tweak some uses in the HC, VC1 and VC2 districts. The proposal would be to get standards in place that address the scenic corridor protection. The consultants may recommend a rezoning in the eastern gateway. An analysis will have to be done whether or not that makes the most sense to the long term TDR strategy by balancing the values and development potential between the two. The design standards are an alternate way to achieve the short term goals.

D. Roberts stated there is a process with the County that is requesting information regarding the Wastewater Management Plan (WMP) and where the Township is going to suggest for a sewer surface area. An area the Township has identified as an area for affordable housing has a waste water treatment plant on the property. The location of the sewer service area would logically be placed on that property. He would like to be able to designate the area rather than have the county propose the sewer service area. He stated the WMP is trying to determine where the Township is going to allow sewer service rather than the rest of the Township who will rely on ISSD (Individual subsurface sewage disposal system). The sewer service area ties into the proposal which counts on the increase on the type of density in the area. The area will need to have the capacity for the development credits.

J. Scott stated they have tweaked the issues around the preservation of the scenic corridor. The little tweaking that was required can be addressed once they get into the market research phase of the project. It will help them determine if the designated receiving area can accommodate the proposed development. The details cannot be addressed until they get to the market research phase of the TDR.

T. Decker stated Route 12 Business Park, MEL and Kingwood Township School have treatment facilities.

D. Banisch stated the question is what will be mapped for future septic service areas for the future density development. If that is done, the DEP will give a green light to a permit that can be issued to support that development.

J. Burke stated the Township is not proposing any sewer service, public utility or pipeline. The Township is trying to focus if someone wants to come in and build a facility, it will need sewer service. The Township would rather have it where there are existing ones. The sewer service will limit the development to that one area and not sprawled out along Route 12. When a developer comes in, the Township will have an area already zoned for it. The developer would be invited in this area rather than in a scenic spot between Frenchtown and Baptistown, which are the areas the Township is concentrating on to preserve their scenic values.

D. Banisch stated the TDR plan would actually seek to remove the development rights out of the area from Baptistown west and into the Eastern Gateway Village. D. Roberts stated the Eastern Gateway Village will contain 300 acres. There are 1205 acres in the Route 12 corridor. D. Banisch stated in the Highway Commercial zone there is a minimum lot size of four acres which lends itself to sprawl. The Village Commercial 2 zone has a minimum lot size of two acres. He stated there is quite a bit of area that is undeveloped. It is clearly aimed at addressing the existing development along the Route 12 corridor.

P. Lubitz stated the Township should keep in mind, two principles: any plan should maintain the property value of any of the property holders along Route 12 and especially as it relates to zoning, the environmental integrity of the property should be preserved.

D. Banisch stated if the Township designates this area as a potential sewer service area, the DEP would look favorably and act as expeditiously as they can to facilitate this type of vision. The Township will need to rely on the consultants that have done the analysis that the balancing and designation works.

J. Scott stated the consultants are taking the 1500 acres along the corridor and identifying the 1200 acres to be zoned and developed in the future that preserves the character of the Township. The Township has heard from the community over and over again. Route 12 is how people define Kingwood. The plan is focusing on a 300 acre footprint that the Township currently has zoned for Business Park and Commercial.

D. Banisch stated sewer service areas can be considered for permits for septic. Part of the approval for the WMP will require zoning ordinance amendments to reflect the DEP nitrate dilution formulas and the required minimum lot sizes, which might require five or six acres. A system requiring up to 2,000 gallons per day would be an office building of approximately 16,000 sq ft. Once the DEP approves the County's WMP, the DEP will work on the logistics of how the Township will be zoned.

P. Lubitz stated the Township is going with a plan having County endorsements rather than a plan by itself. It has kept in mind the taxpayers. It will allow the bringing in of commercial ratables to stabilize the tax rate. He stated if the plan does not allow the property owners along Route 12 to maintain their values, he will not endorse it. The Township has to come up with some viable plan to bring ratables into the Township without creating more sprawl, strip malls or have it look like Routes 22 or 18. The Township has to stabilize its tax rate.

J. Burke stated with the TDR in place, it will increase the values of both properties. No one is taking the value of their property from them. The area will become more valuable by allowing the owners to sell their credits in the TDR process. They will be able to get money for their credits and keep their property. It is a win-win situation. It will help the Township concentrate the development in one area.

J. Scott stated as an attempt to closure he wanted to remind the Board that today the Township has 1500 acres of hodge-podge zoning which would allow more bowling alleys and auto repairs. There is no strategy behind the zoning. He stated, hopefully, before you at the next meeting will be an enhanced strategic plan and the Board will have the opportunity of looking at the totality of the zoning along Route 12.

S. McNicol inquired if the consultants knew of any town where TDR has worked in New Jersey. If they cannot provide an example, the Board should not consider TDR.

D. Roberts stated the short term potential is the May Time of Application deadline. The Board will lose control over the process of the applications before the Board. The Board has had the luxury of a down economy and the limitation of wastewater. Economics are driving the type of applications the Board is currently hearing. The TDR is from a long term standpoint. For the market assessment, the properties would be evaluated on the current zoning. The value of the credits would be based on the sales and appraisal methods. A property owner can sell those credits and the scenic corridor becomes a down zone area. It is like farmland preservation which pays a farmer not to subdivide the property and build houses. Down zoning provides a push to create a market in the receiving areas. The market analysis might find that the sending area would be too large and might generate too much development in the receiving area. The Board is the one who would hold the public hearing on the market analysis. The TDR element of the master plan would have the final delineation of the sending and receiving districts

to make sure the program will work. The DEP is trying to encourage smart growth as using this as a tool. He stated the development value would be the same.

J. Mathieu stated TDR is an ancient concept that has been around since the late 60's. It has been a miserable failure. He stated he has been on the Board since 1988 and Route 12 used to be a combination of residential and commercial development. In 1988 it was rezoned for residential and a lawsuit was brought in 1990. Route 12 changed from all residential to all commercial. Route 12 has a storied past. The zoning along Route 12 has gone back and forth radically. He stated there are a lot of good things in this proposal. The Board should look at the reality of whether it is doable or not. He stated the carrying capacity of the TDR receiving area must be determined. He doesn't think it is a bad concept but it needs a lot of study.

J. Burke stated the Township must take a number of steps to do the research. The Township is not committing to anything. It is opening the door to do the research. He stated the Board members are talking about it as being a fait accompli. All the research needs to be done before the next steps can be taken. He stated there are no intentions to take anyone's rights or values away. There is not one person who would take any value from any property owner in this Township.

D. Banisch stated the TDR was the long term strategy. The court has concluded the TDR statute pre-empted the municipality's use of the non-contiguous cluster requirements. The state has already set up how one's property development rights can be moved to another.

E. Niemann stated the Township is not considering rezoning now. The plan is to set up design standards along Route 12, which will maintain an appearance of order along Route 12, while the TDR investigation is underway.

D. Pierce stated the Board can adopt an ordinance that changes the design standards in the Route 12 corridor while the Township Committee works on the studies to see if the TDR is feasible.

D. Banisch stated designating a sewer service area does not limit the Township's options. It is a request to the County to investigate if it can support a sewer service area.

It was moved by J. Mathieu, seconded by L. Senus and carried to request the County to investigate the possible designation of a sewer service area for the areas mapped on the screen and to report back to the Township with their findings that it can support that designation.

All members present voted **AYE** on **ROLL CALL VOTE**.

After some discussion, it was decided the Board would recommend to the Township Committee to adopt an ordinance providing for design standards along Route 12. D. Banisch stated there would be a review of the permitted uses and some of the archaic uses will be removed from the zones.

Emergency Management Coordinator – Solar Ordinance Amendments

J. MacConnell, OEM, F. Floyd, Chief of the Fire Department, R. Hanley, Captain of the Fire Department and C. Gural, First Lieutenant of the Rescue Squad were present this evening.

The following issues were discussed:

- Evacuation;
- Signage;
- Mowing of the grass (fire potential);
- Fire suppression system (type);
- Access roads and maintenance of the access roads;
- Require information provided to Emergency Responders;
- Enclosure of the inverters and switch gear;
- Provide MSDA sheet on any technology used in the systems;
- Prohibition of cadmium telluride;
- Requirement of a Phase 1 Environmental Assessment when property changes from agricultural use to any other use;

It was moved by J. Mathieu, seconded by J. Strasser and carried to recommend to the Township Committee to amend the Ordinance No. 16-16-2010 to incorporate the above suggestions from the Fire Company, Rescue Squad and professionals. All members present voted **AYE** on **ROLL CALL VOTE**.

D. Banisch reviewed his letter of March 8, 2011, as follows:

The following proposed regulations would be added to the conditional use standards for development of major solar photovoltaic energy facilities to require that lands so utilized in the Township's AR-2 Zone are subject to the same mandatory open lands set aside requirements that currently apply to development in the Zone. The proposed open lands requirements for major solar or photovoltaic energy facility development are substantially consistent with the existing open lands set aside requirements in the ordinance as they pertain to mandatory cluster / lot size averaging subdivisions.

The proposed amendment begins at §132-102.P.(1)b. below, and will be added to the existing conditional use standards for major solar or photovoltaic energy facility development, and would apply in only the AR-2 Zone.

§132-102.P.

P. Solar and/or Photovoltaic Energy Facilities and Structures.

All Major solar or photovoltaic energy facility or structure installations shall comply with the following conditional use standards:

(1) Major solar or photovoltaic energy facilities and structures.

a. Minimum lot size: 20-acres. **(Existing)**

(▼▼▼ The following text is the proposed AR-2 Zone amendment ▼▼▼)

b. In the AR 2 Zone, the minimum lot size shall be 20 acres, and there shall be provided open lands, which shall not be occupied by any component of the major solar or photovoltaic energy facility, and shall be permanently deed restricted from further development, subject to the following regulations:

i. On all tracts of land 40 acres or greater in size, or a tract or tracts of land of any size adjacent to land which has been deed restricted for farmland or open space preservation, or a tract identified as or adjacent to greenway or open space lands in the Kingwood Township Master Plan, Open Space Plan or Farmland Preservation Plan, no major solar or photovoltaic energy facility shall occupy more than 50% of the gross tract area, provided that the remaining 50% of gross

tract area shall be dedicated as open lands, which shall contain a minimum of 30% of the unconstrained tract area.

- ii. A stormwater management system for the tract may be located in the open lands parcel, however the land area of any detention or retention basin or drainage swale shall not be counted toward the minimum open land area requirement.
- iii. Open lands shall contain a minimum lot circle of 300 feet.
- iv. Rights-of-way or cartways of any existing or proposed road or driveway shall not be included in the calculation of the open lands.
- v. New agricultural construction (e.g., barns, shelters and greenhouses) shall not result in an impervious surface coverage in excess of 10% of the total acreage of the preserved open lands. New agricultural construction shall be located a minimum of 200 feet from the property line.
- vi. Open lands may be deed restricted for farming use, and subject to the protections that the Township Right-To-Farm Ordinance, §74-1, conveys to agricultural operations.
 1. Open Lands Guidelines. The following guidelines should be considered in determining the configuration and location of open lands:
 - (a) Preserved open lands shall be configured in such a manner as to facilitate agricultural use. Factors such as, but not limited to, proximity of the open lands to adjacent tracts containing farming operations, the ability to create large contiguous tracts of open lands or farmland and the desirability of maximizing separation between the solar or photovoltaic energy facility and existing off-site residential units should be considered.
 - (b) In order to maintain the rural character and scenic viewsheds of the Township, as perceived from the public rights-of-way, open lands should be located in such manner as to preserve scenic vistas and preserve the rural character of farmsteads, barns and homesteads after development.
 - (c) Where tracts include existing farmland operations, designated open lands should be configured to preserve such uses, to the greatest extent possible, in order to facilitate the continuation of farming.
 - (d) Proposed roads should be located with the portion of the property utilized for the major solar or photovoltaic energy facility. It is the intent of this subsection to keep open lands portion of the tract continuous and free of roadway intrusions; however, adequate access must be provided to the open lands area.
 - (e) Open lands created as a result of these regulations may be used for recreation, agriculture, or resource conservation. No buildings or structures shall be constructed or maintained on the deed restricted open lands except such structures that are accessory to the agricultural, natural resource conservation or open lands use.
 2. Dedication of Open Lands. If the applicant proposes that open lands resulting from a major solar or photovoltaic facility development be dedicated to the Township, either in fee or through conveyance of development rights, then the Planning Board shall request approval from the governing body that the open lands, or interest therein, resulting from the application of development, will be accepted by the Township. If

approval is not granted within 60 days from the date of referral that the Planning Board approves the major solar or photovoltaic energy facility development, the applicant shall submit a deed restriction prohibiting subdivision or further development of the open lands in accordance with the open lands provisions of this ordinance.

-----End of proposed amendment requiring open lands-----

We note that the Township’s zoning ordinance for mandatory cluster/lot size averaging subdivisions includes the following provisions, which are not reflected in the proposed ordinance amendment above:

- (3) An applicant seeking to subdivide a tract of land less than 40 acres may be required by the Board to submit a cluster or lot size averaging subdivision plan if in the opinion of the Planning Board, such a development will assist in achieving the objectives of the Master Plan, Official Map or other planning documents and ordinances.
- (4) An applicant may propose a cluster or lot size averaging subdivision plan for any tract of land greater than 14 acres but less than 40 acres.
- (5) In all instances, the Planning Board shall have sole authority as to whether cluster or lot averaging shall be permitted on tracts of less than 40 acres or required on tracts of more than 14 acres.

All of the proposed standards identified above would be added as conditional use standards as the draft ordinance amendment is presented. Failure to meet one or more of these standards would require an application to the Zoning Board for variance relief under the provisions of N.J.S.A. 40:55D-70d.(3).

If the conditional use ordinance standards amendment was limited to §132-102.P.(1)b.i., and the remaining provisions (§132-102.P.b.ii through vi.2 were located in the ordinance under Article IV, Supplementary Regulations, in a new subsection pertaining solely to major solar or photovoltaic energy facility development in the AR-2, any proposed deviation from the remaining standards could be heard as design waivers by the Planning Board, thereby allowing the Planning Board to retain jurisdiction of a greater number of applications that may be presented in the Township’s AR-2 Zone. However, it should be noted that the provision requiring 50% open lands and that the open lands include at least 30% of the tract area is the new ordinance standard that applicants may likely find the most challenging with which to comply.

Additional issues are raised as possible ordinance amendments to the provisions for solar or photovoltaic energy facility conditional use standards:

1. Requirements for emergency services access within and around the perimeter of a proposed major solar or photovoltaic energy facility – this would presumably require the construction of a gravel road of sufficient width to allow circulation of emergency apparatus within and along the perimeter of the facility;
2. Requirements for a knock-box for access through locked gates of a facility for emergency services access.
3. Requirement to locate inverters at the perimeter of solar panel fields – this would permit better access for emergency services apparatus in the event of a fire at an inverter; and
4. Prohibition against residential use on the same lot as a major solar or photovoltaic energy facility;

D. Banisch stated there should be a conditional use in the ordinance. D. Pierce stated if they are kept as conditional uses and they do not meet any one of the conditions, they have to go before the Board of Adjustment. It would be better to keep them as design standards.

It was moved by D. Haywood, seconded by M. Syrnick and carried to recommend to the Township Committee the amendments in D. Banisch's memo dated March 8, 2011. All members present voted **AYE** on **ROLL CALL VOTE**.

Windpowered Generation Towers

D. Banisch reviewed his memo to the Board dated March 8, 2011:

At the February 10, 2010 meeting, the Board requested the following changes to the proposed draft Wind Energy ordinance amendment:

1. Include provision requiring that the required setback should be the previously proposed minimum setback of 100' or 150% of the tower height, but add a provision that the setback and location of the wind turbine may require enhanced setback so that the turbine will cast no shadow on adjacent properties;
2. Add a requirement for landscaping to the requirement for a fenced compound;
3. Determine the maximum effect of a wind turbine at 180', which is the maximum permitted height proposed in the ordinance.

The following provisions were previously included in the 2nd draft of this ordinance and remain incorporated in the 3rd draft of the ordinance amendment provided below.

1. Require compliance with and make reference to standards at §132-54E. Performance standards for all uses. These standards include restrictions against electrical interference and glare, establish noise and vibration limits, which may be applied to small wind energy systems);
2. Include anti-climbing standards in ordinance. Anti-climbing standards are included in the revised 2nd draft ordinance amendment;
3. Add fence enclosure requirement. A requirement for fence enclosure is included in the revised 2nd draft ordinance amendment;
4. Establish maximum height as the same permitted wireless telecommunications tower height. The Township's height ordinance standard for wireless telecommunications towers is "180' unless the applicant can demonstrate a substantial need for a greater height." This standard has been added to the 2nd draft ordinance amendment;
5. Establish maximum noise levels as per existing ordinance standards. The 2nd draft ordinance amendment references existing noise standards as per §132-54E., which are identified in the ordinance as follows:

* * * * *

Draft Ordinance Amendment:

The following proposed ordinance amendment replaces existing ordinance provisions for 'energy-generating equipment driven by wind' as permitted accessory uses, which are found at §132-50.D., E. & F., establishes 'small wind energy systems' as permitted accessory uses with proposed standards, and establishes wind energy systems as permitted uses in the BP Zone.

- §132-50.D. currently reads as follows:
“D. Energy-generating equipment driven by wind, including structures, towers or poles. Energy-generating equipment driven by wind is permitted. (This is to be replaced in its entirety with a new Subsection D. as per below.)

- §132-50.E. currently reads as follows:
E. Height and area of accessory buildings and structures. The height and area of accessory buildings shall be as prescribed in Article II, ~~except for energy generating equipment driven by wind, including structures, towers or poles, which, if it meets the setback requirements described in Subsection D. above, may be such height as necessary to function adequately, provided that the structure, tower or pole complies with all building and electrical codes.~~ (Strikethrough text above ~~thus~~) is to be repealed.)

- §132-50.F – a portion of which reads “. . . ; provided, however that energy-generating equipment driven by wind, including structures, towers or poles, may be erected in any yard, provided that it meets the setback requirement set forth in Subsection D.”

SECTION ONE. Amend §132-4 “Definitions” to include the following new definition:

SMALL WIND ENERGY SYSTEM -A wind energy conversion system, consisting of a wind turbine, a tower, and associated control or conversion electronics, that is used to generate electricity and has a nameplate capacity of 100 kilowatts or less.

SECTION TWO. Replace §132-50., subsection D., in its entirety, with the following new Subsection D, to read as follows:

§132-50.D. Small wind energy systems.

- (1) Minimum lot size: 20-acres.
- (2) The maximum height shall be 180' including any portion of the rotor when in operation.
- (3) The minimum setback of the small wind energy system from any property line shall be 100' or 150 percent of the system height, whichever is greater, provided that the small wind energy system shall cast no shadow on adjacent property, which shall be demonstrated to the satisfaction of the reviewing / approving Board or Township Official issuing a permit for the proposed small wind energy system. The demonstration that the small wind turbine shall cast no shadow on adjoining properties shall be calculated on the shortest day of the year, when the [sun](#)'s daily maximum position in the sky is the lowest of the year.
- (4) The wind generator and the tower may be located in side and rear yard areas only. Associated control or conversion electronics, wiring and utility poles that are necessary for connection and power consumption on the property shall be set back from all property lines as prescribed in §132-50.F. below.
- (5) The wind generator and the tower shall remain painted or finished in the color or finish that was originally applied by the manufacturer, unless a different color or finish is approved by the approving authority.
- (6) The small wind generator and tower shall be enclosed within a fenced compound or suitable security barrier to restrict access to all exterior ground mounted equipment and components of the small wind energy system. Such fence or security barrier shall be of sufficient height to comply with electrical and building code requirements, but in no

case shall be less than 6' in height. The fence or security barrier shall be visually screened from off-site view with evergreen trees, which shall be planted in double rows, staggered 15' on center, adjacent to the fence or security barrier.

(7) The small wind generator tower shall be fitted with anti-climbing devices or suitable barriers to prevent climbing on the tower.

(8) The small wind generation tower shall comply with §132-54E "Performance standards for all uses." Acceptable noise levels shall be calculated through the use of computer modeling to demonstrate that sound pressure levels comply with noise limits set forth in §132-54E. Noise level modeling shall be subject to approval by the Township Engineer.

(9) There shall be no signs visible from any public road or neighboring property posted on a small wind generator system or any associated building, except for the manufacturer's or installer's identification, appropriate warning sign, or owner identification.

(10) Abandonment.

(a) A small wind energy system that is out-of-service for a continuous 12-month period will be deemed to be abandoned. The Zoning Officer shall issue a Notice of Abandonment to the owner of a small wind energy system that is deemed to be abandoned. The notice shall be sent return receipt requested.

(b) The property owner shall have 30 days to respond to the Notice of Abandonment from the receipt date of the Notice.

(c) If the property owner provides information that demonstrates the small wind energy system has not been abandoned, the Zoning Officer shall withdraw the Notice of Abandonment and notify the property owner that the Notice has been withdrawn.

(d) If the Zoning Officer determines the small wind energy system has been abandoned, the property owner shall remove the facility in its entirety at the owner's sole expense within 3 months after the owner receives the Notice of Abandonment.

(e) If the property owner fails to remove the facility in the time allowed under (d) above, then the Township may remove such system and place a lien on the property for the cost of the removal.

(11) The small wind energy system shall not cause flickering shadows on adjoining properties.

(12) The small wind energy system shall not be visible from any portion of the Delaware River and its Tributaries included in the National Wild and Scenic Rivers System.

(13) The small wind energy system shall comply with all applicable building and electrical codes.

SECTION THREE. Amend §132-50.E to repeal the following provision "except for energy-generating equipment driven by wind, including structures, towers or poles, which, if it meets the setback requirements described in Subsection D. above, may be such height as necessary to function adequately, provided that the structure, tower or pole complies with all building and electrical codes." so that Subsection E. shall now read as follows:

"E. Height and area of accessory buildings and structures. The height and area of accessory buildings shall be as prescribed in Article II."

SECTION FOUR. Amend §132-50.F. “Location.” to repeal the following provision: “; provided, however that energy-generating equipment driven by wind, including structures, towers or poles, may be erected in any yard, provided that it meets the setback requirement set forth in Subsection D.” so that Subsection F. shall now read as follows:

“F. Location. An accessory building may be erected in side and rear yard areas only at no less distance from the front lot line than the principal structure and shall be set back from side and rear lot lines as prescribed in Article III, and the Schedule of Lot and Building requirements located at the end of this chapter, except that, if erected on a corner lot, the accessory building shall be set back from the side street to comply with the setback line applying to the principal building for that side street, and except further that no poultry or livestock shelter shall be erected nearer than 100 feet to any lot line.”

SECTION FIVE. Amend §132-35.B. Permitted principal uses for the BP Business Park Zone, to add the following permitted principal uses, which shall read as follows:

- (9) Major solar or photovoltaic energy facilities or structures in accordance with the provisions found at §132-60.A.
- (10) Wind Energy Systems, in accordance with the provisions found at §132-50.D.

It was moved by S. McNicol, seconded by J. Mathieu and carried to recommend to the Township Committee the above amendments. All members present voted **AYE** on **ROLL CALL VOTE**.

Resolution No. 2011-02 -Open Space and Recreation Plan Element

R. Dodds announced the public hearing has been adjourned to April 14, 2011, at 7:30 PM at the Kingwood Township Municipal Building without the requirement of additional notification.

Resolution No. 2011-03 - Laurelton/Belmont – Block 22, Lots 16 & 16.01 – Muddy Run Road – Request for Extension

It was moved by J. Mathieu, seconded by M. Synchron and carried to adopt Resolution No. 2011-03 - Laurelton/Belmont – Block 22, Lots 16 & 16.01 – Muddy Run Road – Request for Extension. All members present voted **AYE**, except E. Niemann, who was **INELIGIBLE**.

Lindabury, McCormick and Estabrook – Dismissal of Actions for Lack of Prosecution/Time of Application Law

D. Pierce stated the memo was in response to the Board’s inquiry relating to the potential to file placeholder applications under the Time of Application Law. He has done some research and the Board can adopt rules, regulations and policies.

It was moved by J. Mathieu, seconded by S. McNicol and carried adopt the following policy which provides that applications shall be dismissed without prejudice under the following circumstances:

- 1. If the applicant or an appropriate representative is not present on the date when the application is called for a hearing; and

2. If the applicant has not corrected the deficiencies in an incomplete application within 120 days of the determination of completeness.

All members present voted **AYE** on **ROLL CALL VOTE**.

Proposed Ordinance No. 16-4-2011

It was moved by P. Lubitz, seconded by M. Syrnick and carried to recommend adoption to the Township Committee of proposed ordinance No. 16-4-2011. All members present voted **AYE** on **ROLL CALL VOTE**.

Proposed Ordinance No. 16-5-2011

It was moved by J. Mathieu, seconded by S. McNicol and carried to recommend adoption to the Township Committee of proposed ordinance No. 16-5-2011. All members present voted **AYE** on **ROLL CALL VOTE**.

Approval of Minutes

Consideration for the approval of the February 10, 2011 minutes will be placed on the April agenda.

PRIVILEGE OF THE FLOOR

C. Nieciecki stated she was present this evening to get an update on the status on Copper Creek Landscaping. D. Pierce responded he has not heard a response from the zoning officer. C. Nieciecki stated her biggest concern is the encroachment on her property line as well as the possibility of a fire. D. Pierce stated this type of operation would be required to obtain a DEP permit as well as a site plan from the Planning Board. D. Pierce stated he is receiving solid waste and is operating a solid waste facility. He does not believe it is a permitted use. Landscape contractors are permitted uses. D. Banisch stated it is not permitted in the AR-2 zone.

E. Niemann stated she will communicate with the zoning officer to request from Copper Creek Landscaping their DEP permit.

APPLICATION STATUS

CORRESPONDENCE

R. Dodds reviewed as per the agenda.

PRIVILEGE OF THE FLOOR

ADJOURNMENT

It was moved by P. Lubitz, seconded by J. Strasser and carried to adjourn the meeting at 10:54 PM. All members present voted **AYE**.

Respectfully submitted,

Diane Laudenbach, Secretary