

## MINUTES

7:30 PM

**PRESENT:** R. Dodds  
D. Haywood  
T. Kratzer  
P. Lubitz (7:56 pm)  
J. Mathieu  
S. McNicol  
E. Niemann  
L. Sensus  
J. Strasser  
D. Banisch, Planner  
P. McCabe, Engineer  
D. Pierce, Attorney

**ABSENT:** M. Szymick, Alt #1

### 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

Copper Creek Landscaping – Block 12, Lot 10 – Route 12

D. DeFrango of Copper Creek Landscaping was present this evening.

D. Pierce stated he has reviewed the documentation and has done some research on the matter. He stated there is an exemption for replenishing soil nutrients. Under the recycling rules that have been adopted by the Department of Environmental Protection (DEP), there is an exemption. The manner in which he is undertaking the procedure is not in conformance with that exemption. N.J.A.C. 7:26A-134(12) provides for an exemption for leaf mulching activities on lands deemed actively devoted to agricultural or horticultural use. The exemption provides that the leaves shall be removed from bags, boxes or similar containers prior to spreading and all the discarded bags, boxes or containers must be placed in a suitable refuse receptacle. The Township has photographs of bags mixed in with the leaves so that is something that needs to be corrected.

In addition, within seven days after delivery the leaves have to be spread over the field in a thin layer of no more than six inches. No later than the next tilling season, the layer of leaves needs to be tilled into the soil. In addition, if he wants to take advantage of that exemption, he will have to provide written notice beforehand to the DEP, Township and Hunterdon County indicating that he will be engaging in the activity. If he complies with that exemption, he would be entitled to do it under the Right to Farm Act and would not have any other DEP requirements. If it is continued to be done in a fashion that does not comply with that exemption, he would have to come in before the Board for a site plan approval.

D. DeFrance stated he resides at 1106 State Route 12, Frenchtown. He has done research on some of those factors. A member from the DEP instructed him on a few things. He has been working on a conservation plan with a representative from DEP. At the time it was instructed to him as long as he is not engaging in excess of more than 10,000 cubic yards, which he is nowhere near, he would be allowed to engage in this type of activity. As he has been researching, there is a fine line between NJDEP and other organizations. He is trying to work with the DEP, NRCS and USDA and completing a conservation plan. The current activity is being used as a temporary substitute. Soil Conservation indicated he would need 38,000 lbs. of fertilizer for each acre of land. With him working with NRCS for the last two years, the current plan is what they have formulated. He is removing the trash and disposing of it properly. He invited the Board members to come to his property and look at what he is doing. He is trying to do it as environmentally friendly as he can. The NRCS is reconstructing his conservation plan. His goal, at the end of day, was to cut down on some of the fertilization, which gets into the watershed.

Point Breeze Solar Farm – Block 21, Lot 1 – 550 Barbertown Point Breeze Road – Determination of Completeness

M. Peck of Florio, Perrucci, Steinhardt and Fader, was present this evening for Alethea Clean Tech. An application has been filed for a solar farm at the intersection of Barbertown Point Breeze Road and Route 12. The application before the Board of Adjustment proposed to leave the house on the property. The application was denied by the Board of Adjustment. The Board of Adjustment felt the residential use was not a good mix with the proposed solar facility. The application is proposing to remove the farm house. It is a conforming application. He has reviewed T. Decker’s completeness review letter of March 31<sup>st</sup>:

Item 17 Existing drainage facilities (culverts, marshes, ponds, streams and floodplains) within 200 feet of the property have not been provided. Applicant notes on plans that these features do not exist within 200 feet of the property and beyond the 50 feet as shown on the plans.

Item 18 Location and type of existing easements or rights of way and utility structures, including ponds, drainage, sewer, water, sight rights, power, telephone and gas lines within 200 feet of the property have not been provided. Applicant notes on plans that these features do not exist within 200 feet of the property and beyond the 50 feet as shown on the plans.

Item 28 Location of off street parking have not been provided. Noted by applicant as not applicable. A waiver would be appropriate.

Item 29. Location of truck loading and unloading platforms and docks are noted by the applicant as not proposed or required. Noted by applicant as not applicable. A waiver would be appropriate.

Item 30 Provisions for refuse and garbage disposal have not been provided. Noted by applicant as not applicable. A waiver would be appropriate.

M. Peck stated T. Decker indicates in his memo that three of the items are not applicable and the applicant is seeking a waiver of those three items. The two other items:

Item 17 Existing drainage facilities (culverts, marshes, ponds, streams and floodplains) within 200 feet of the property have not been provided. Applicant notes on plans that these features do not exist within 200 feet of the property and beyond the 50 feet as shown on the plans.

Item 18 Location and type of existing easements or rights of way and utility structures, including ponds, drainage, sewer, water, sight rights, power, telephone and gas lines within 200 feet of the property have not been provided. Applicant notes on plans that these features do not exist within 200 feet of the property and beyond the 50 feet as shown on the plans.

M. Peck stated the application does not have any areas within 200' and requested of waiver from item Nos. 17 and 18.

P. McCabe stated T. Decker, in regard to Item Nos. 17 and 18, felt, with the nature of the project, it would not be an issue if the Board wanted to grant those waivers.

E. Hill, professional engineer, had prepared the plans for the application. He stated there are no other environmental constraints beyond the 50' that would impact this project. The ordinance would require them to survey other people's properties. They have accommodated the requirements by indicating any critical areas around the perimeter of the property. The Wickecheoke Creek is 400' south of the property. The application is not proposing disturbing any DEP regulated areas. The wetlands associated with the Wickecheoke Creek are on the southeastern corner and west of the farmhouse. Both of those wetlands have been field delineated, pending a Wetlands Determination by the DEP. He will offer testimony that the applicant will abide by the buffers associated with the wetlands. A 150' wetlands buffer has been assigned to the southeast corner as a result of a potential endangered species habitat. He stated the application is a variation of the one submitted to the Board of Adjustment. They had applied to the Board of Adjustment for a use variance to retain the house. The application was denied so they decided to remove the house. They had met with the fire and rescue officials and revised the plans.

It was moved by D. Haywood, seconded by S. McNicol and carried to grant waivers for completeness purposes of item Nos. 17, 18, 28, 29 and 30. All members voted **AYE** on **ROLL CALL VOTE**.

It was moved by D. Haywood, seconded by S. McNicol and carried to deem the application complete. All members voted **AYE** on **ROLL CALL VOTE**.

Perrotti/EffiSolar Energy Corporation – Block 23, Lot 11 – 796 County Road 519 – Determination of Completeness

V. DeSimone, attorney, of the law firm of Giordano, Halleran & Ciesla, stated the application is for a 21 megawatt system. He stated T. Decker provided the following review comments:

**Administrative Items:**

Our office has not received the following items. The Board Secretary should confirm if they have been provided:

- Item 4. Copy of plat in electronic format.
- Item 7. Executed escrow agreement.
- Item 9. Certification as to D&R Canal Review Zone or that property is exempt.
- Item 10. Certification from Tax Collector.
- Item 11. Proof of submission to the County Planning Board.
- Item 12. Proof of submission to the NJDEP for a freshwater wetlands letter of interpretation or presence/absence determination.

- Item 14. Proof of submission to the Hunterdon County Soil Conservation District is required.
- Item 15. Certification as to D&R Canal Review Zone or exemption is required.

**Plan Requirements:**

- Item 1 Applicant requests a waiver from a site plan sheet size of 24"x36". Plans are provided on a 30"x42" sheet size. **A waiver is recommended.**
- Item 2 Applicant requests a waiver from a scale of not more than 1" = 50'. Given the nature of the application and clarity of the plans, **a waiver is appropriate.**
- Item 5. Plans reference a boundary and topographic survey as prepared by Stires Associates, PA dated March 18, 2011. Copies of the survey plan should be submitted.
- Item 11. A property owner's list as certified by the Kingwood Tax assessor should be provided for properties within 200 feet.
- Item 20. Dimensions are not provided on the existing buildings. At this time all buildings are proposed to be removed. **A waiver is appropriate.**
- Item 45 Waiver is requested from showing septic systems and wells within 100 feet of the property. Given the nature of the application and clarity of the plans, **a waiver is appropriate.**

The applicant has also identified item Nos. 18, 24, 25, 26, 27, 28, 30, 32, 33, 34, 35 and 42 as being non-applicable. Given the nature of the application, we agree with the applicant's assessment.

V. DeSimone indicated, under the Administrative Items, he has submitted or will submit proof of submission of the items. He stated he is requesting a waiver from item Nos. 1, 2, 20 and 45. He will comply with item Nos. 5 and 11. He stated item Nos. 18, 24, 25, 26, 27, 28, 30, 32, 33, 34, 35 and 42 are not applicable to the application. He is requesting the Board grant the waivers.

R. Dodds requested the applicant to provide Administrative item Nos. 4, 7, 9 10, 11, 12, 14 & 15 and Plan Requirement item Nos. 5 and 11 two weeks prior to the May 12, 2011 meeting.

It was moved by D. Haywood, seconded by S. McNicol and carried to grant absolute waivers for item Nos. 1, 2, 20 & 45. All members voted **AYE** on **ROLL CALL VOTE**.

It was moved by D. Haywood, seconded by S. McNicol and carried to deem the application conditionally complete providing Administrative item Nos. 4, 7, 9 10, 11, 12, 14 & 15 and Plan Requirement item Nos. 5 and 11 and a schematic of the proposed panels are supplied by April 27, 2011. All members voted **AYE** on **ROLL CALL VOTE**.

Proposed Ordinance No. 16-14-11 – To Amend and Supplement the Land Use Regulations, Specifically "Zoning, Chapter 132" Establishing the Route 12 Scenic Corridor Overlay (SCO) and Route 12 Corridor Overlay District Regulations

D. Banisch stated the nature of the Planning Board's review is to offer comments to the governing body and determine if the ordinance is not inconsistent to the Master Plan of the Township. The ordinance establishes a design standard and amends some uses in the corridor. There are two different standards for the scenic corridor. There is a minimum set back of 100' and a requirement of a 30' landscape buffer to the west of County Route 519. It provides for an enhanced setback of one half of the lot width and provides for a proposed development

to be screened and buffered with landscaping. The permitted uses are identified in the ordinance. He stated the uses no longer permitted in the Scenic Corridor Overlay (SCO) District are:

- a. Mechanical contractors;
- b. Furniture and appliance stores;
- c. Department stores and supermarkets;
- d. Mini warehousing;
- e. Theaters and bowling alleys;
- f. Automobile dealerships (new and used).

R. Dodds opened the meeting to the public for comments.

D. DeFrange inquired how the ordinance would impact his property. D. Banisch reviewed the conditional uses permitted in the proposed ordinance:

- a. Home occupations;
- b. Barn Conversions;
- c. Wholesale greenhouses;
- d. Accessory apartments;
- e. Elder Cottage Housing Opportunity Unit (ECHO)
- f. Major Solar/Photovoltaic Facilities or structures in accordance with the Provisions found at 132-102.P and 132-61, as supplemented in 132-41.J. of this Ordinance.

D. Banisch stated agricultural and farming uses are permitted in the zone.

In response to an inquiry of the conditional use of major solar/photovoltaic facilities, D. Banisch responded there are enhanced standards in proposed Ordinance No. 16-13-2011 which require open lands for any such development as in residential subdivisions in the AR-2 zone.

It was moved by D. Haywood, seconded by L. Senus and carried to find Proposed Ordinance No. 16-14-2011 is not inconsistent to the Master Plan of the Township. All members voted **AYE** on **ROLL CALL VOTE**, except S. McNicol and J. Strasser, who voted **NAY**, and T. Kratzer, who **ABSTAINED**.

S. McNicol indicated she did not like receiving the draft two days before the meeting. With ordinances of this nature, she feels the Board should have received it earlier. She did not have time to look at the master plan and see that the ordinance is in accordance with it. T. Kratzer stated he had the same problem.

J. Mathieu stated he shares the concerns of his fellow board members. The ordinance provides for comprehensive and beneficial changes. He would have liked more time to look at the draft. He inquired if it is necessary to adopt the draft, could it be revisited fairly soon? If so, any changes that need to be made can be made at that time. He stated there might be a need to move forward on the adoption of the ordinance.

D. Banisch stated if the Board cares to have a review of an ordinance after it is adopted and identifies any recommendations to the Township Committee, the Board may do so.

Proposed Ordinance No. 16-15-11 – To Amend and Supplement the Land Use Regulations Specifically “Zoning, Chapter 132” Establishing Eastern Gateway Village District Zones and Regulations;

D. Banisch stated the Board has heard some discussion on proposed ordinance No. 16-15-11 and has offered a variant of comments. Previous to this evening, the existing zoning regulations within the Route 12 corridor permitted a pattern of sprawl development. The zoning has been in place for decades. There has been very little in economic development. This particular effort identifies an area within which to concentrate mixed use development. They are high ratables while limiting the impact in a localized fashion with convenient access to the highway. It is an area where there are two waste water management systems, which can be expanded. The proposed ordinance provides for three subdistricts: Mixed Use Core, Commercial & Artisan and Professional Office/Residential. The Mixed Use Core Subdistrict is located in the southeast corner of the Eastern Gateway Village Center Overlay (EGVCO). The Commercial & Artisan Subdistrict is located on the north side of Route 12. The Professional Office/Residential Subdistrict is located on the southwest side of the EGVCO. There has been some discussion in the past with Transfer of Development Rights (TDR) which provides for enhanced density and development and has been identified in the ordinance. There is no TDR mechanism currently in Kingwood Township. If a TDR was in place, additional building height would be permitted. The proposed ordinance provides for development in a localized and focused area. It is much different than any other development.

D. Roberts stated the EGVCO area provides for a location for COAH housing. It is one place in the Township which contains the beginning of waste water structures since there are package plants in the area. Most importantly this is actually a smaller area than in the existing BP zone. It has been positioned as a focal point. It provides the State with a something specific which has been identified by the Planning Board and Township Committee. It is the only area in the Township where sewer service area is being contemplated due to the pre-existing sewerage treatment available in the area. It provides for an area where the Township is contemplating a higher density. The receiving and sending areas are already identified. The Township needs to perform a market analysis to see if the plan will be feasible. It is a jump start on the following steps the Township Committee might take to create a center in this area.

D. Banisch stated it is a rezoning. It is replacing the existing permitted uses with a whole new slate of mixed use smart growth. It turns away from the heavy industrial uses in the BP zone and moves toward a much more progressive use of the land. It provides for smart growth development. There is a potential for enhanced density in the future not currently existing. It is turning away from the permitted uses as shown on the map and replacing them with much more aggressive land uses which are more appropriate. D. Banisch stated the proposed density would not be achievable without a wastewater service area.

In response to a question by a Board member regarding the Route 12 Business Park, D. Banisch responded the applicant has some vested rights and has been given some additional time due to the Permit Extension Act. The applicant may have to come back to amend his site plan approval which would be subject to the new regulations. Any departure from the permitted uses would require Board of Adjustment approval. D. Roberts responded the property is located in the Commercial and Artisan Subdistrict and the use is permitted in the new ordinance. The prohibitions are for warehousing and lumberyards. If the applicant were to lose his vested rights, he would be permitted to continue except for warehousing or lumberyards. The reason the warehousing was removed was to not allow the heavy truck traffic associated with that use.

J. Scott stated the proposed ordinance addresses the concern of locating the parking area behind the buildings rather than along the frontage of the road. The landscaping provisions provide a buffer as best as it can for the uses that are permitted.

D. Banisch stated the only properties affected in the proposed ordinance are on the included map. In the other areas along Route 12, the scenic corridor standards apply. The proposed ordinance is redirecting the development along Route 12 by requiring water and sewer service in the EGVCO area. He stated development will be limited by septic discharge and water availability. Some of the permitted densities might not be

achievable because they are limited in Individual Subsurface Sewer Disposal systems (ISSD). Any ISSD which discharges 2000 gallons or more per day will be evaluated by the DEP to see if the soils and geology of the area can support the system and to determine nitrate dilution models, which cannot exceed two parts per million. If the area builds out before there is centralized water and sewage, the lots could be developed to support no more than 2000 gallons per day, approximately a 16,000 sq ft building. He stated the DEP is requiring the delineation of sewer service areas. The DEP is looking to limit the extension of sewer into inappropriate areas. They are focusing on areas that make sense. It is to maintain the integrity of all of the watersheds in New Jersey. There is a carrying capacity formula. The Township will have to investigate the adoption of a Utility and Service Element to the Master plan. Development can occur as long as they do not exceed the carrying capacity of the watershed. With the proposed ordinance, the Township is focusing the development in one location. At the current time, the DEP is having some difficulty on how these regulations are going to be implemented at the lower level. The Wastewater Management Plan (WMP) is a continuing one. The sewer service area will be designated and development will be constrained by the ISSD. If the Township designates an area for a sewer service, the Township can request the county to take the lead by placing it in their WMP. He stated the rezoning action will change the zoning and require design standards. It will not achieve full build out unless there is a sewer service area. The proposed ordinance complies with the Township's COAH obligations. The adoption of this ordinance does not have any bearing of any subsequent zoning changes which might occur in the future. The market will determine the viability of the development.

J. Scott stated this is theoretically going to lead to potential development in the BP or PO zoning. There are 845 acres in the BP or PO zone which is permitted for development. The development will spread horizontally throughout the corridor. The proposed ordinance provides for what the Township and community would like to see in this area.

J. Strasser stated the Township is encouraging bringing in all the utilities. Once the utilities are established, it grows. The reason Kingwood has been able to stay as it is is because there are no utilities. There are so few areas for builders to build right now. It is a desirable area out here. The economy has stifled the development in the Township.

P. Lubitz stated he agrees with J. Strasser's comments. The question becomes what kind of development will occur not if development will occur. It makes more sense to have a small area that will have ratables stabilizing our tax rate rather than 1500 acres of strip malls.

D. Banisch stated there is currently a package plant in the BP zone and proposed Commercial and Artisan Subdistrict. The owner's package plant is underutilized. According to the owner's DEP permit, the package treatment plant has to be owned by a single owner. He has the ability to expand his system but could not sell to someone off site under the terms of his permit.

R. Dodds called for comments from the public.

L. Frank, Tumble Idell Road, inquired, in regard to the map, why would you put in a doctor's office across the street from MEL. D. Roberts stated that use is permitted in the existing zoning.

M. Peck inquired if this is an overlay so that the existing zoning will remain intact or will it throw out the BP zoning regulations and create a completely new zoning. D. Banisch responded it will create a completely new zoning. M. Peck inquired what uses would be permitted in the Mixed Use Core Subdistrict. D. Roberts stated the following uses would be permitted:

1. All uses permitted in the Village Commercial (VC-1) Zone, except that supermarkets are also permitted;

2. Multifamily Units above Ground-level Retail (Mixed-Use);
3. Townhomes, with or without Co-housing units;
4. Multifamily Residential Buildings, with or without co-housing units, on sites served by centralized wastewater collection systems;
5. Planned Unit Development, inclusive of all uses permitted in 1-4, on tracts of 10 acres or greater served by a centralized wastewater collection system.

D. Banisch stated solar panels are a conditional use in the VC1 district.

C. Nieciecki, Route 12, stated that MEL has a salt plume that the Township is relying on them to keep the salt contained. The proposed development proposal will create a need for more water. It might move the salt plume. D. Roberts stated MEL was placed in this district to allow them to continue to remediate the issue. The plan might be an alternative solution to MEL pumping by bringing in water for property owners.

J. Strasser stated he sits on this Planning Board and takes his job seriously. The decisions the Board makes now will affect the Township in the future. Kingwood is one of the most beautiful parts of New Jersey.

E. Niemann stated she doesn't think anyone would disagree with his sentiments. The Township is trying to preserve the core of what we appreciate in Kingwood and allow for some reasonable development with guidelines that we have some degree of control over.

P. Lubitz stated he loves Kingwood also. He remembers total open space between his property and the Delaware. There will be change in Kingwood and the Township will have to choose to preserve Kingwood.

J. Mathieu stated the EGVCO will depend entirely on carrying capacity. The water supply for this new zoning would come from within Kingwood. It would draw the salt over and up into the new area. D. Roberts responded the Water Allocation Permit would take the existing situation into account. The DEP would have jurisdiction. MEL's aquifer problem is a situation they are mitigating. Any change would require DEP approval. E. Niemann stated the Environmental Commission does get regular reports of MEL. It is an open case with the DEP. They have been working on this site for 20 years. The Township would not jeopardize the health and safety of anyone who wanted to develop in that area.

S. McNicol stated the plan has some good points but is not perfect. A lot of the plan comes down to wastewater treatment and water supply. Some of the surrounding municipalities have systems that are antiquated and the costs are in the millions to update. She is concerned that developers with all the good intentions might default and are unable to continue to maintain these facilities. She is aware it is not part of the discussion this evening but where does that fall. Does it fall on the rest of the taxpayers of the community? How is the Township going to manage the package plant? D. Banisch responded he does not know the answer right off hand but they will be fully liable for the expense.

T. Kratzer stated currently we have wells and septic systems, which when maintained properly will last approximately 30 or 40 years. He stated having private systems eliminate the monthly prices for sewer and water service. When you add up those bills, it is a big budget for a long term commitment for sewage and water supply.

E. Niemann stated this is the first step the Township would take in order to determine if the plan is feasible. The Township will not go forward without the benefit of a fact finding of the issues raised this evening. Without knowing the facts, the Township will not go any further with developing this area for higher density.



It was moved by D. Haywood, seconded by J. Mathieu and carried to find Proposed Ordinance No. 16-15-2011 is not inconsistent to the Master Plan of the Township. All members voted **AYE** on **ROLL CALL VOTE**, T. Kratzer, S. McNicol, L. Senus and J. Strasser, who voted **NAY**.

R. Dodds stated the Planning Board's recommendation is not binding. The Township Committee might go in a different direction. It is just a recommendation.

D. Banisch stated the governing body may adopt a reasons resolution for adopting an ordinance the Planning Board found to be inconsistent with the Master Plan.

Proposed Ordinance No. 16-13-11 – To Amend and Supplement the Land Use Regulations Specifically “Zoning, Chapter 132” Pertaining to Solar or Photovoltaic Energy Facilities and Structures;

D. Banisch stated the Board has had the benefit of considering this ordinance amendment previously. As a result of the concerns addressed at previous meetings, the ordinance adds a provision to the conditional uses relative to the AR-2 Zone. There is a 50% open lands requirement for a major facility that is proposed in that zone. Section 132-102P addresses the conditional use standards for the major facilities. If an applicant fails to meet one or more of the conditions in a conditional use, they have to go to the Board of Adjustment. If the conditions are reduced, it is a greater likelihood that the application will appear before the Planning Board. The proposed ordinance sets aside open lands in the AR-2 zone as a required condition in the conditional use section. It is a pretty high standard. The design standards provide how the open lands have to be provided.

R. Dodds called for comments from the public.

V. DeSimone of Giordano, Halleran and Ciesla stated he has a client before the Board with a commercial solar application. His client is looking to sell to the PJM. A solar facility requires five acres for every megawatt it generates. The ordinance requirements of the 50% set aside which shall contain a minimum of 30% of the unconstrained tract area is unreasonable. His first question is if the Board has had an opportunity to review the Master Plan to see if it is consistent with it. He inquired if there had been a Re-Examination report since 2004. D. Banisch responded no. V. DeSimone stated one of the provisions of the MLUL is a requirement that the Master Plan be re-examined every six years. In 2008 the State developed the State Master Plan which required a 20% reduction in greenhouse gases by 2020. Kingwood Township's Land Use Ordinance is unreasonable. In 2008 the Conservation Plan Element was added to the Master Plan. The 2008 Conservation Plan Element's primary objective was to promote renewable energy resources. This ordinance does not effectuate the 2008 Conservation Plan Element of the Township's Master plan. D. Banisch inquired if V. DeSimone was stating that the Township Committee's action to permit these uses in all zones does not encourage renewable energy resources. V. DeSimone responded with the 50% and 30% unconstrained land it prohibits any meaningful solar installations other than residential solar. J. Mathieu stated the primary goal is to meet the State's goal of 20% by 2020. V. DeSimone stated the requirements must make sense from a financial standpoint. He further stated the State policy is just a guideline. J. Mathieu inquired how V. DeSimone can state the Township's Master Plan does not comply with the State's goal of 20% by 2020. V. DeSimone stated he is asking the Board to consider the State's policy.

D. Pierce stated the Board and the Township Committee have given careful consideration of State policy. The review of the requirements has been going on for eight months. This is not the first version. The Township is promoting renewable energy by going one step further than the State law.

R. Roseberry, Maser Consulting, stated he is representing one of the applications tonight. He stated when comparing cluster developments to solar facilities you have increased density. Solar facilities cannot be

clustered. The ordinance is comparing solar facilities to a cluster development but not giving the benefit of the additional density. It would be more appropriate for the set aside for the non-clustering. The design of a solar facility is different than a residential development. Solar facilities minimize ground disturbance and have minor impacts on the property, much less than a residential development. Throughout the ordinance the Township addresses the visibility of the solar facilities which have to be invisible from adjoining properties and the road. That type of design criteria is difficult to analyze. It is appropriate to put in landscape provisions, such as specific landscape buffers and glare issues but to say it cannot be seen from anywhere is a very difficult ordinance to enforce or apply. He is not sure how it is enforceable and it is extreme in its design. In Subsection 12, the ordinance should clarify what type of structure it is requiring, a shed or building and its dimensions. The Fire Department had a reasonable request of requiring CO containers which should be installed in a location readily accessible. If he reads the requirements of the roads for solar facilities and takes an extreme opinion, the ordinance requires paved roads to every component of the solar facility. R. Dodds responded the requirements were as a result of discussions with the fire and rescue personnel. The fire and rescue personnel wanted the ability, if someone was injured, to be able to get them out of the facility. The fear was driving in a truck and not being able to get it out which would create a more unsafe situation. R. Roseberry stated he has worked on 50 solar developments and has received different opinions. The requirement needs to be more specific. It is not their intention to build roads. The access is given by driving over the roads. He stated solar facilities do not usually require storm management.

D. Frank, 17 Muddy Run Road, referring to the bottom of page 3, inquired if an adjacent property owner decides to deed restrict his property, it will affect what he can do with his property. D. Banisch responded yes. D. Frank stated he is concerned that if he owns property and a neighbor decides to deed restrict their property, it will limit his ability of what he can do on his property. His taxes are not going down. He is a tax paying citizen losing control of his property. He is concerned with more and more restrictions creating a lesser value for his property. D. Banisch stated he understands his concerns. The same standards are being applied to a farm being converted into a residential subdivision. It is a wholesale conversion. One might take a view of these uses in the AR-2 zone as an enhancement to the value of your property. D. Frank stated he has looked at subdividing but does not want to look at other houses. He stated fewer panels are less income and would be economically unfeasible. It is almost as if the Township is forcing him to preserve or walk away from his property. E. Niemann responded, under 132-20.P.(1)(c), the ordinance provides for an opportunity to preserve space off site. D. Banisch responded if the solar facility developer wants to provide the open required land offsite, the ordinance provides for that allowance.

D. DeFrange, Route 12, stated he is more concerned with seeing so many solar facilities being installed. He suggested the ordinance should provide that the buffer zone contain native plants which will bring in wildlife and be sustained for thirty years.

R. Dodds indicated based on this evening's comments, there needs to be a change to the section that pertains to the access to all components. The engineer can design a standard that would be based on the weight of the vehicles which would be utilizing the interior roads. D. Banisch stated the requirements are in the design standard ordinance and the applicant can request a design standard waiver or exception. It does not require a special notice such as a variance. It can be dealt with almost administratively in the meantime.

D. Banisch suggested the following change, which is not a substantive change:

Section V., 132-102.P.(12) and Section VII, 132-61.A(1):

**Where** ~~S~~solar facility inverters and switch gear equipment ~~shall~~ **may** be ~~fully~~ enclosed within a structure, ~~such~~ ~~S~~structures shall include at least two (2) means of ingress and egress for emergency response.

S. McNicol stated one of the members of the Agricultural Committee attended a presentation on solar panels in Pennsylvania. At that conference it was recommended the soil be tested at the dip line to see if there has been any degradation.

R. Dodds stated the ordinance might need to be modified further.

D. Banisch stated the Board felt strongly about the applicant demonstrating that the required buffering was adequate. The Board has had two applicants comply with those requirements. In regard to the 50% set aside, the MLUL states, in adopting zoning ordinances, the Township may give due consideration to the amount of area of the site than can be occupied by structures.

It was moved by D. Haywood, seconded by J. Strasser and carried to find Proposed Ordinance No. 16-13-2011 is not inconsistent to the Master Plan of the Township, with the following non-substantive changes:

Section V., 132-102.P.(12) and Section VII, 132-61.A(1):

**Where** ~~S~~solar facility inverters and switch gear equipment ~~shall may~~ be **fully** enclosed within a structure, **such** ~~S~~structures shall include at least two (2) means of ingress and egress for emergency response.

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

Proposed Ordinance No. 16-16-11 – To Amend and Supplement the Land Use Regulations Specifically “Zoning, Chapter 132” of the General Ordinances of the Township Pertaining to Escrow Deposits For Major Solar or Photovoltaic Energy Facilities and Structures

D. Banisch stated the existing fee structure in the ordinance is fairly limiting in the amount of money the Secretary can collect as an escrow deposit. It does not adequately address the amount of money needed. It results in a constant chasing of applicants for escrow. The proposed ordinance amendment will permit a greater amount of money up front.

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

P. McCabe and D. Banisch were excused from the meeting at 10:16 PM.

## **PRIVILEGE OF THE FLOOR**

R. Oakes, 140 Horseshoe Bend Road, inquired about the appropriate process to obtain permission to install a helistop on his property. D. Pierce responded residential airstrips are a conditional use in the AR-2 zone. If he meets all the conditions, he can appear before the Planning Board. D. Pierce stated the ordinance was interpreted, when the previous owner of Block 14, Lot 31, applied for a helipad, it was deemed a conditional use. If the ordinance does not apply to a helistop, he would have to apply to the Board of Adjustment.

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

R. Dodds announced the public hearing on the Open Space and Recreation Plan Element has been adjourned to May 12, 2011 to be held at the Kingwood Township Municipal Building, beginning at 7:30 PM without any further public notification.

The Board thanked S. McNicol for her involvement in reviewing the Open Space and Recreation Plan Element.

R. Dodds requested the Re-Examination Report be listed on May's agenda.

### **Approval of Minutes**

It was moved by S. McNicol, seconded by T. Kratzer and carried to approve the minutes of February 10, 2011 and place on file. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by S. McNicol, seconded by D. Haywood and carried to approve the minutes March 10, 2011 and place on file with the following changes:

*Page 2 – last paragraph – D. Pierce stated the ~~arrays~~ sheds would be subject to taxation.*

*Page 3 – second paragraph – The applicant is working with the fire department on increased gate size, aisle size, addition of a gate and compacted land around the perimeter, which the applicant has ~~denied~~ declined to do.*

All members present voted **AYE** on **ROLL CALL VOTE**, except T. Kratzer, who **ABSTAINED**.

### **CORRESPONDENCE**

NJ Planner – February-March 2011

### **PRIVILEGE OF THE FLOOR**

The Board requested the Fire Department and Rescue Squad be involved in the review of all development applications and proposed ordinances.

### **ADJOURNMENT**

It was moved by J. Strasser, seconded by D. Haywood and carried to adjourn the meeting at 10:31 PM. All members present voted **AYE**.

**Respectfully submitted,**

**Diane Laudenschick, Secretary**