

**MINUTES**

**7:30 PM**

**PRESENT:** R. Dodds (left mtg. @ 8:34 PM)  
D. Haywood  
T. Kratzer  
P. Lubitz  
J. Mathieu  
E. Niemann  
L. Sensus  
J. Strasser  
D. Banisch, Planner  
T. Decker, Engineer (left mtg. @ 8:32 PM)  
D. Pierce, Attorney

**ABSENT:** S. McNicol  
M. Syrnick, Alt #1

**CALL TO ORDER**

The meeting was called to order by R. Dodds at 7:32 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**

**Resolution No. 2011-06 – Point Breeze Solar Farm – Block 21, Lot 1 – 550 Barbertown Point Breeze Road**

M. Peck, attorney for Alethea Cleantech Advisors, LLC, was present this evening for the matter. He stated last month the application received preliminary approval. Unfortunately, they are seeking to withdraw the application without prejudice and rescind the approval. It is unlikely they will be able to comply with the approval and site plan. He stated he appreciated all the courtesies the Board showed and he thanked them for their time.

**Sundancer – Block 24, Lot 4 & 7 – Barbertown Point Breeze Road/Muddy Run Road – Determination of Completeness**

W. Harrison, attorney for Sundancer Capital LLC, was present this evening for the matter. At last month's meeting the Board granted some waivers. The two items the Board did not grant waivers on was the site lines

on the two roads and providing the details concerning the solar panels and related equipment. He stated the applicant provided that information a few weeks ago and have satisfied the Board's submission requirements.

T. Decker stated the applicant has provided the additional information requested last month and recommends the Board deem the application complete.

D. Pierce stated once the Board deems the application complete, the applicant is in agreement to toll the running of the time to act on the application until the dispute is resolved by a judge or with the applicant.

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

### **Garden Solar – Block 15, Lot 4.03 – Public Hearing and Final Approval**

W. Wilson, attorney and co-applicant, was present this evening for the matter. He stated the applicant is here this evening for final approval. He has complied with the issues raised in T. Decker's letter from last month.

T. Decker stated often preliminary and final approval is granted at the same time. The Board granted preliminary approval and requested the applicant return for final approval. He has reviewed the final site plan and it is consistent with the preliminary plans that were approved. All the conditions of preliminary approval have been satisfied. He had a preconstruction meeting two weeks ago with the applicant.

R. Dodds stated the T. Decker had provided to the Board some photographs.

T. Decker stated an inspector from Van Cleef Engineering went out as part of the pre-construction meeting and took some photographs. The berm seems to contain construction material such as concrete and asphalt, which probably came from another job site and stock piled on this property. It has been present for quite some time as there is vegetation and good sized trees in the area. Concrete and asphalt is visible on the surface. He understands the applicant had a Phase I assessment of the property.

W. Wilson stated he has had conversations with T. Decker in regard to the berm. He had provided the lease provisions during the preliminary hearing. He was notified about six weeks ago that the project turned into a purchase transaction. Con Edison Development performed the Phase I assessment of the property. The environmental representation and affidavits during the initial evaluation indicate no hazardous materials. There was no determined that there was anything hazardous or toxic. It was the applicant's intention to leave the berm. The applicant agreed to provide additional screening of the berm. The berm is located entirely on the applicant's property.

D. Pierce stated there is no indication of when it was placed on the property but it seems as if it has been there for some considerable amount of time due to the vegetation growing on top of it. In response to a Board member's inquiry if the Township had an ordinance relating to the dumping of concrete and asphalt on a property, he responded he would be hesitant to say what the ordinances would have provided prior to 1972.

D. Banisch inquired if there were any soil borings conducted in the berm area. W. Wilson stated the applicant was advised the berm was man-made. They have received an Affidavit of Environmental Assurance issued by the DeSapio's. The applicant has contacted the DEP and the Township and they were informed of no hazardous materials on the site. W. Wilson stated if there is a problem Con Edison Development would be pursuing it with the person giving them the Affidavit of Environmental Assurance. If there is an issue, Con Edison

Development will be looking towards someone else to provide recompense. W. Wilson stated the applicant acknowledges the berm and if, for any reason it becomes a problem, they acknowledge it is their problem. P. Lubitz stated the Township had a resident come to their committee meeting who made some comments about the lighting on the property. W. Wilson stated he had not been aware of a problem until this evening. He stated there is a light stanchion on both of the properties. The light is at the entrance way. The lights are present until the fence is constructed. On the Route 12 site, the security fence is a little more than one third completed. P. Lubitz stated the Township has an ordinance pertaining to light spilling onto another property. W. Wilson responded the applicant would like some type of lighting for security reasons. T. Decker stated he will have one of the inspectors look at the lighting.

R. Dodds opened the meeting to the public.

No comments were offered from the public.

R. Dodds closed the public hearing on the matter.

R. Dodd's inquired if a resident opens his property up for the deposit of concrete and asphalt and sells the property, who is responsible? D. Pierce responded the Township has the ability and authority to deal with the current property owner. The agreement between a current owner and a prior owner is a private matter.

P. Lubitz stated he would like to see the environmental report. He stated the current owners do not have enough knowledge on the contents of the berm.

W. Wilson stated he does not believe there was intrusion testing. The applicant made their inquiries to the Township and DEP. The berm is viewed as containing construction debris of concrete and asphalt. It would be a violation of the site plan to add material to the berm.

As a result of the discussion this evening, D. Pierce suggested the Board require the applicant to perform some sort of intrusive testing to confirm the materials in the berm and that there are no contaminants present.

W. Wilson responded he cannot advise the Board this evening that the applicant would be willing to perform intrusive testing. He stated DEP was on the site during the permitting process for NJDEP. No issues were raised. R. Dodds stated the review for the delineation of the wetlands would not have looked at any hazardous waste.

W. Wilson stated if it is the Board's desire to impose, as a condition of final approval, additional testing, he would like to see a very specific explanation of what is to be done. He inquired if the Board would be satisfied with an opinion from the company that performed the Phase I that there were no issues. T. Decker responded he can take a look at what the company saw in the Phase I report.

In order to provide the parameters of the testing, D. Pierce suggested the hearing be adjourned until next month and he can provide the Board with the particular testing language. W. Wilson stated one month would not be a problem. T. Decker stated the berm is outside the limits of construction and will not have any impact on the current project.

It was moved by P. Lubitz, seconded by L. Senus and carried to adjourn the public hearing until July 14, 2011 at 7:30 PM without further notice. All members present voted **AYE** on **ROLL CALL VOTE**.

W. Wilson stated the applicant was agreeable to grant an extension of time to the next regularly scheduled meeting.

Revisions to Ordinance No. 16-13-11

D. Pierce stated the discussion this evening is as a result of some comments that were made during the public hearing on the ordinance. With respect to Section 132-102.P.(1)(b)(c) requiring that the open lands requirement set forth in Section 132-102.P.(1)a, may be provided off site on one or more tracts of land, provided however that there shall be not less than 110% of the open lands requirement provided (including 110% of the gross tract area and 110% of the unconstrained tract area) on the off site tract or tracts of land. He stated the professionals believe there might be problems with the way it is worded and it is better to delete that section.

D. Pierce stated in Section VI(6), clarification needs to be included from what point is the height measured. D. Banisch stated the logical point would be from the dwelling rather than the property line. After a discussion with the Board members, D. Banisch suggested 30' or the highest point of the dwelling, whichever is lower.

At the suggestion of the Fire Chief, Frank Floyd, a suggestion was made to add that no span of arrays should exceed 400' in length, irrespective of whether there is an inverter there or not.

It was moved by J. Mathieu, seconded by T. Kratzer and carried to recommend the above changes to Ordinance No. 16-13-11. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Approval of Minutes**

It was moved by J. Mathieu, seconded by L. Senus and carried to approve the minutes of May 12, 2011 with the following corrections:

Page 8 – first paragraph – third sentence from the bottom – *change down to dawn.*

Page 8 – sixth paragraph – *In regard to #18, the solar panels which were chosen for this project have a non-reflective glare glass .....  
(corrected in original set of minutes)*

All members voted **AYE** on **ROLL CALL VOTE**, except for E. Niemann, who **ABSTAINED**.

### **Expense Accounting**

D. Laudenbach informed there remains \$2,246.46 in the line item of the 2011 budget for Planning Board other expenses. She informed the Board that once that amount has been expended no bills can be paid until the November Township Committee meeting, providing funds are available for transfer.

T. Decker left the meeting at 8:32 PM

R. Dodds turned the meeting over to J. Mathieu and left the meeting at 8:34 PM.

### **Re-Examination Report of the Master Plan**

D. Banisch stated the section of the statute that pertains to the requirement that municipalities review their Master Plan every 6 years has been amended to require the review every 10 years. The one thing about the Re-Examination Report is that the Township is contemplating a rezoning. If rezoning is contemplated without a

Re-Examination Report, there are certain notice requirements that are required to be sent to the affected property owners as well as the surrounding ones. D. Banicsh reviewed the Re-Examination Report for the Board.

***40:55D-89d. The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared.***

After review of the Master Plan, land development ordinances, and a series of background papers on a series of planning issues in preparation of the 2011 Periodic Reexamination Report, the Planning Board has identified the following recommendations.

Master Plan

1. The Planning Board should organize one set of goals and objectives for each Master Plan element and incorporate them into a master list of goals and objectives statement for the Master Plan.
2. The Planning Board should prepare a Land Use Plan Element that evaluates and addresses the updated land use planning policies, goals and objectives that are discussed in this periodic reexamination report into a single updated document.
3. Prepare a Policy Statement as required by N.J.S.A. 40:55D-28d of the M.L.U.L., indicating the relationship of the proposed development of the municipality, as developed in the master plan to (1) the master plans of contiguous municipalities, (2) the master plan of the county in which the municipality is located, (3) the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," sections 1 through 12 of P.L. 1985, c.398 (C. 52:18A-196 et seq.) and (4) the district solid waste management plan required pursuant to the provisions of the "Solid Waste Management Act," P.L. 1970, c.39 (C. 13:1E-1 et seq.) of the county in which the municipality is located".
4. The Township has instituted a municipal recycling program, which offers drop-off of recyclables at the municipal garage on Kingwood Station Road on the 2<sup>nd</sup> Saturday of each month. The municipal recycling program supplements optional curbside recycling pick-up that is available from residential solid waste haulers, to make sure that all residents have the opportunity to recycle their recyclables. This program responds to State law recycling requirements, however this has not been formally adopted as a Master Plan element as required under the Municipal Land Use Law. The Planning Board should prepare a Recycling Plan Element as required by the Solid Waste Management Act", P.L. 1970, c.39 (C. 13:1E-1 et seq.).
5. Update the Circulation and Community Facilities Plan elements of the Master Plan. In addition, a Utility Services Plan Element is needed to assess wastewater treatment capacities for centralized sewer facilities in connection with the EGVCO.
6. The ERI also included an inventory of historic sites. The Planning Board should prepare and adopt a Historic Preservation Plan Element in accordance with the M.L.U.L. requirements.
7. There have been a number of changes in regulations, State law, regional and State planning initiatives, and local assumptions forming the basis of the master plan and development regulations since adoption of the last Land Use Plan element that suggest the need for an updated Land Use Plan, including:
  - a. State Development and Redevelopment Plan Cross Acceptance III;
  - b. Hunterdon County Strategic Growth Management Plan;
  - c. Transfer of Development Rights legislation;

- d. Stormwater management rules and the requirement that each municipality develop its own stormwater management plan;
- e. Demographics/growth – increased pace of development within the Township and a shift of development opportunities within the region as a result of new State regulations which include (1) the designation of C-1 streams in Kingwood Township with required 300’ setbacks from these water courses, (2) State stormwater management regulations, (3) new COAH rules and methodology soon to be adopted and the results of the 2010 Census. Because of these developments, the Planning Board should update the Land Use Plan element of the Master Plan.

In addition to changes in the State and County regulatory and planning environment, this report identifies numerous recommendations, some of which are carried forward from the 2004 Reexamination Report. As recommended in the 2004 Reexamination Report, this report recommends that the Planning Board update the Land Use Plan element of the Master Plan. As a result of the significant regulatory and policy changes that have occurred at the regional, county and State levels, it is recommended that the Planning Board prepare an updated statement of goals and objectives, and other Master Plan elements to bring the Master Plan up-to-date with current conditions. In addition, this Reexamination Report recommends that the Master Plan be compiled and organized as a single bound document for ease of use and reference in the future.

Land Development Ordinance

The Planning Board has identified the following recommended changes and modifications to the Land Development Ordinance and actions to support the implementation of the Township’s Master Plan. They are:

1. As has been noted the Township has adopted an ordinance providing regulations to site and develop Solar Facilities in the Township. The Planning Board in concert with the Township Committee should evaluate the existing regulations in the context of the discussion addressing the statutory requirements of Section 89c. above. This includes adoption of a “limited planned industrial development option” for major solar or photovoltaic energy facilities and structures, such that the open lands requirement may be addressed off site in accordance with the provisions of Section 65c. of the M.L.U.L., which may better reflect the land use policies of the Township and goal of retaining open lands and protecting the Township’s natural resources as identified in NRI.
2. The Township Committee desires to establish mixed use smart growth land development options at a location that is supported by appropriate existing and planned infrastructure to (1) accommodate the future population growth of the Township, (2) accommodate reasonable opportunities for affordable housing development, and (3) attract beneficial growth and tax ratable development. The area identified for this mixed use development overlay is situated generally along Route 12 in the vicinity of the intersection of Barbertown-Point Breeze Road and Pittstown Road (County Route 615), which has been found to be the most advantageous location in Kingwood Township for smart growth, mixed use high-density development opportunities. This location possesses (1) proximity to Flemington and regional development located to the west, (2) County Route 615 access to the regional interstate highway system located to the north, (3) an undeveloped land reserve capable of supporting smart growth, mixed use high-density development, and (4) lands that currently possess centralized wastewater treatment facilities capable of expansion to support smart growth, mixed use high-density development. An ordinance establishing the Eastern Gateway Village Center Overlay (EGVCO) Zone and Regulations should be adopted.

3. The Township Committee's desire to preserve and enhance the undeveloped rural lands situated along the Route 12 Corridor in such a manner that will maintain and reinforce the Township's rural character and existing scenic views and vistas within and along the Route 12 Corridor should be implemented. Ordinance 16-14-2011 addresses this objective, while at the same time providing for reasonable land use opportunities for lands situated within the Route 12 Corridor. It is recommended that the ordinance be adopted to establish the Route 12 Scenic Corridor Overlay (SCO) zone and Route 12 Scenic Corridor Overlay zone regulations.
4. Based on the recommendations of the ERI the Township Committee should adopt a stream corridor buffer ordinance.
5. The Planning Board recommends that the Township Committee adopt an ordinance amendment establishing an average front yard setback standard based upon existing / adjacent development along existing roads. This is recommended to minimize the evolving condition of a piecemeal and staggered setback pattern of development resulting from the introduction of new development, built to current standards, adjacent to existing development that is situated in close proximity to existing roads. This will help bring uniformity to front yard setbacks and also serve to reduce the undesirable condition of the front yard of a new dwelling being located rearward of the rear of existing dwellings.
6. The Planning Board identified an issue associated with single-family dwelling units resulting from minor subdivisions encountering problems with the siting of septic systems. Therefore the Board recommends that the Township Committee amend the Land Development Ordinance to require that the Board of Health certify the suitability of the proposed location of septic systems at the time a proposed subdivision plan is submitted to the Planning Board, not as a condition of approval.
7. The Planning Board recommends that the Township committee adopt an amendment to the Land Development ordinance that requires all accessory structures to be setback rearward of the principal structure.
8. The Planning Board recommends that the Township Committee amend the sign provisions of the Land Development Ordinance for the following:
  - i. Review and amend existing ordinances for political advertising signs, specifically as regulations relate to (1) the permit process for posting such signs, (2) identifying regulations for placement of signs before and removal after political event, and (3) number of signs permitted on a single property.
  - ii. Establish sign requirements for non-agricultural activities
  - iii. Establish a permit/review approval process for signs of non-residential uses in residential zones, and for placement of property identification signs.
  - iv. Establish requirements for Farm market signs in terms of advertising non-farm agricultural uses.
  - v. Establish a limit on the number and size of signs permitted in conjunction with nonresidential development.
  - vi. Establish permitted signage also needs to be established for the BP and the PO/R zones.
  - vii. Adopt the Route 12/Barbertown Study sign design recommendations.

9. As a result of increases to ordinance amendments that increased minimum lot size and bulk requirements, a large number of preexisting developed lots in the Township have been made non-conforming. An ordinance amendment is needed to permit preexisting developed dwellings on undersized lots to be expanded, enlarged, extended, or added onto within bulk standards tailored to classes of lot sizes, or in accordance with the setbacks that applied immediately prior to the adoption of changes in lot area and bulk requirements. This will serve to reduce the need for setback variance relief for lawfully existing structures that previously conformed to setback requirements, but have been made nonconforming due to changes in the ordinance. In addition, the amendment should permit the expansion of a non-conforming structure, provided that the expansion does not further extend the nonconforming condition, such as a non-conforming setback condition.
  
10. The Planning Board should prepare, and the Township Committee should adopt an ordinance amendment requiring that a standard condition be attached to all Planning Board and Zoning Board approvals, which requires an applicant to return to the approving regulatory Board to document that all conditions of approval have been fulfilled, prior to final approval in the case of major subdivisions, prior to the issuance of a certificate of occupancy in the case of minor subdivision, site plan and/or variance approvals. The ordinance amendment should provide the Board with the authority to determine on an individual basis whether a personal appearance or professional sign-off will satisfy this condition. In cases where zoning board variance relief has been granted, a procedure should be established to ensure that the Construction Code Official does not issue a construction permit until the zoning officer certifies that all conditions of a variance(s) have been satisfied.
  
11. The Planning Board recommends that the Township Committee reconsider the recommendations from Section 89d. of the 2004 Reexamination Report.

***40:55D-89d. The recommendations of the Planning Board concerning the incorporation of redevelopment plans adopted pursuant to the “Local Redevelopment and Housing Law,” P.L. 1992, c. 79 (C.40A:12A-1 et al.) into the land use plan element of the municipal master plan, and recommended changes, if any in the local development regulations necessary to effectuate the redevelopment plans of the municipality.***

The Planning Board has developed no recommendations for the Township to consider the designation of redevelopment plans pursuant to the Local Redevelopment and Housing Law.

D. Banisch suggested the matter be listed on the August agenda for further discussion.

**Privilege of the Floor**

A. Belle inquired if the adoption of proposed Ordinance Nos. 14 and 15 were going to be presented before the Township Committee for adoption. D. Pierce responded the M.L.U.L. requires a notice of hearing on an amendment to a zoning ordinance whose purpose is to change the classification or boundaries of a zone. The proposed ordinances are of such magnitude that they would require the individual notices to be sent to the property owners. If a change to the zoning ordinance is adopted pursuant to the Re-Examination Report no requirement for individual notice is required. It is presumed by law that everyone is aware of the process of the Re-Examination Report so no individual notice is required. Everyone has the opportunity to comment as part of the open public session. The concept is as long as people had the opportunity to comment, there is no need to give them special individualized notices if there is a change in the ordinance based on the Re-Examination Report. D. Pierce stated the agenda is out the Friday before the meeting and provides notice six days before the



meeting that the Re-Examination Report will be discussed. He stated the Re-Examination Report was also on the April agenda.

D. Banisch stated if notice is required it must be made 10 days prior to the hearing.

A. Belle inquired who adopts the Re-Examination Report. D. Pierce responded the Planning Board. D. Pierce reviewed the process of the Township Committee adopting an ordinance.

D. Pierce responded to A. Belle about the adoption of the proposed Ordinance Nos. 14 and 15 by stating it is his understanding that the Township Committee has decided that the cost of mailing the individual notices is prohibitive and prefer to go this route if they adopt those ordinances at all.

A. Belle read from several sets of Township Committee meeting minutes regarding the former IT position. D. Pierce stated this was not the correct forum.

F. Floyd requested the Board revisit some of the ordinances regarding driveway access. E. Niemann stated it has been set aside based on the Township's financial limitations. She stated the Township would not be able to draft an ordinance in 2011. E. Niemann offered to sit down and talk with F. Floyd about his recommendations.

### **Executive Session**

#### **RESOLUTION NO. 2011-07**

**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, 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:

#### **Potential Litigation**

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 P. Lubitz, seconded by J. Strasser and carried to adopt the foregoing resolution. All members present voted **AYE** on **ROLL CALL VOTE**.

J. Mathieu announced the Board is returning to regular session.

#### **CORRESPONDENCE**

J. Mathieu reviewed the correspondence listed on the agenda.

#### **PRIVILEGE OF THE FLOOR**

#### **ADJOURNMENT**

It was moved by P. Lubitz, seconded by J. Strasser and carried to adjourn the meeting at 9:51 PM. All members voted **AYE**.

**Respectfully submitted,**

**Diane Laudenschick, Secretary**