

MINUTES

7:30 PM

PRESENT: R. Dodds
P. Lubitz
S. McNicol
E. Niemann
J. Strasser
M. Szymick
D. Floyd, Alt. #1
D. Pierce, Attorney

ABSENT: T. Kratzer
J. Mathieu

CALL TO ORDER

The meeting was called to order by R. Dodds at 7:33 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 MATTER

Resolution No. 2012 – 03 - Block 8, Lot 25.01 & 25.15 – Rabosky - Lower Oak Grove Road – Boundary Line Adjustment

It was moved by P. Lubitz, seconded by S. McNicol and carried to adopt Resolution No. 2012 – 03 - Block 8, Lot 25.01 & 25.15 – Rabosky - Lower Oak Grove Road – Boundary Line Adjustment. All members present voted **AYE** on **ROLL CALL VOTE**.

SEIA and Threatened and Endangered Species Ordinance

D. Pierce stated he consolidated and incorporated all of the comments from the professionals and made it more internally consistent and manageable. He removed any reference to the Environmental Commission because they are advisory. The ordinance describes what it applies to and what is required when it applies.

Section 1.4a(1) – P. Lubitz inquired about what kind of situation which would require the Natural Heritage Database report. He stated the DEP research fee is \$70.00 per hour with no knowledge of the amount of time

required to do the research. A resident cannot do the research. He stated putting a trail on the property is a perfect example of how the effort is greater than the impact. R. Dodds stated the GIS overlay will tell you a general area of an endangered species but the areas are in half mile sizes and difficult to understand.

Section 1.2(5) – P. Lubitz inquired if any variance will trigger the need for an SEIA. D. Pierce suggested possibly it may be more appropriate for a density variance, which is requesting a greater density than the ordinance allows. R. Dodds suggested a change in the impervious coverage requirement. D. Pierce responded the Township’s impervious coverage is pretty small. If someone would come in with a request for a 2% deviation, it would be a lot to put on them. R. Dodds stated the applicant could have a ten acre lot with a single building that would require half of the lot to be paved, which would make a significant impact. D. Pierce suggested it be applicable to site plans. P. Lubitz suggested the ordinance provide a provision that the requirement could be waived.

Section 1.2(1) and 1.2(2) – D. Pierce suggested, after hearing the comments of the Board members, that the area the Township is most concerned with protecting is the AR-2 area. It does not make sense to make this ordinance applicable to the commercial and industrial areas. The Township has determined those areas as appropriate for the permitted types of developments. D. Pierce suggested making it applicable to major subdivisions creating 6 lots, 8 lots or more. E. Niemann stated the DEP provides protection when a development occurs in the commercial zone. D. Pierce stated the ordinance incorporates an SEIA where the development does not involve a DEP permit. If a DEP permit is required, DEP will review the application. The Board discussed but no decision was made on the number of lots that would trigger the requirement of an SEIA. P. Lubitz stated any number the Township picks will be arbitrary.

Section 1.3 – P. Lubitz suggested a tighter criteria rather than requiring any applicant coming before a board to require an Environmental Commission review. E. Niemann responded the Environmental Commission looks at every application anyway once they have gone through completeness. S. McNicol commented state law does not allow an Environmental Commission to review applications. D. Pierce was not sure if state law permitted but suggested it may be in the Township ordinance. D. Pierce suggested the language could be removed.

Section 1.5(a) – P. Lubitz inquired as to what are the acceptable credentials of the preparer, an ornithologist is referred to later.

Section 1.5(b)2 – The scale of the map must be determined. E. Niemann suggested the Township engineer be contacted for the standard number.

Section 1.5(b)3 – The blanks have to be filled in. D. Pierce suggested D. Banisch may be able to provide the numbers as he raised the issue. R. Dodds stated the requirements should be consistent with the standard everyone uses not just something used only in Kingwood.

Section 1.5(b)4 – P. Lubitz inquired if an applicant is able to provide the pre-existing background levels of noise. Some discussion was had between the Board members and it was decided to strike Section 1.5(b)4.

Section 1.5(b)5 – An amount must be inserted. It will be sent to the Environmental Commission.

Section 1.6(a)1 – The definition will be determined by the Environmental Commission.

Section 1.6(a)2 – The wording should be changed to “cuts into the existing terrain.”

Section 1.6(b)1, 2 & 3 – The definitions will be determined by the Environmental Commission.

Section 1.7 – T. Kratzer should be consulted for the appropriate waivers.

Section 2.2(a) – A definition for close proximity needs to be put in the ordinance. D. Pierce stated the standard for wetlands is 150'. After discussion, the Board determined “standard” should be inserted rather than “close”.

Section 2.2(b) – The language “qualified by the Board reviewing the development application” should be changed to “qualified by the Board who has jurisdiction approving the development application”.

Section 2.2(c) – R. Dodds stated the professionals responsible for this type of testing will suggest a spring and fall study. He stated in the Pinelands there are four studies, spring/fall and spring/fall. P. Lubitz stated “c” only applies to ones that have already been identified.

Section 2.2(d) – R. Dodds suggested the last sentence of this section should be stricken.

Section 2.3 – D. Pierce stated the Board has the authority to eliminate the language of this section. The Board has the ability to retain any expert. The Board’s engineer is qualified to review the test results. He suggested the end of the paragraph should read “the applicant shall post an additional amount to the escrow account of \$1,000 if it is a project of a magnitude to trigger the requirements of this section”.

Section 2.4 – Amend it to read “or as otherwise determined by the approving board”.

R. Dodds stated there are a number of items that the Environmental Commission will review. S. McNicol requested D. Pierce provide the Environmental Commission with an updated version before their meeting in April.

Section 2.4(b) – M. Syrnick inquired about the 15’ buffer. D. Pierce responded it is from the Millstone version which added a 15’ additional buffer.

Solar Ordinance Amendment

D. Pierce stated the Board discussed last month the desirability of readopting the solar ordinance to eliminate one of the potential challenges which was the ordinance was not adopted properly by providing notice to all the affected property owners. The ordinance can now be a follow up to the adoption of the Re-Examination report. The draft ordinance also seeks to correct the two following issues: *discretion of the Township Committee (which needs to be removed) and the open lands requirement*. The Gombosi litigation has been withdrawn and there are no claims or challenges to the ordinance pending. There is no challenge to the open land section but when he was reviewing the case with the judge there were problems with the open lands section. The ordinance leans toward finding that solar panels were impervious coverage. He suggested eliminating the open lands requirements and simply going with a very restricted impervious coverage limitation which would obtain the same results. The intensity of the use is such that you cover a great deal of land with very little impervious coverage. The judge was saying, by law, solar panels cannot be considered impervious.

R. Dodds stated the Master Plan describes the nature of the community the Township is trying to retain.

J. Strasser was concerned that the science permitted the Township to have seven acre zoning. D. Pierce stated the Township’s zoning is not exclusionary. The zoning allows for the preserving of the character of the area. The zoning still allows 2 acre lots along existing road frontage. D. Pierce stated West Amwell requires 10 acre

zoning which was upheld by the Court. He is not aware of any science that you needed 10 acres in West Amwell.

It was moved by E. Niemann, seconded by S. McNicol and carried to recommend to the Township Committee that they introduce and adopt an amended Solar Ordinance to remove the issues discussed this evening. All members present voted **AYE** on **ROLL CALL VOTE**.

APPROVAL OF MINUTES

It was moved by E. Niemann, seconded by S. McNicol and carried to approve the minutes of March 8, 2012. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by S. McNicol, seconded by E. Niemann and carried to approve the minutes of the March 8, 2012 Executive Session minutes with the following correction:

Page 1 – first paragraph – remove the words “a trivial thing called money.” (corrected on original minutes.

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

It was moved by S. McNicol, seconded by E. Niemann and carried to release of the March 8, 2012 Executive Session Minutes. All members present voted **AYE** on **ROLL CALL VOTE**.

APPLICATION STATUS

CORRESPONDENCE

R. Dodds reviewed the correspondence on the agenda.

PRIVILEGE OF THE FLOOR

An unidentified member of the public inquired if the deed restriction on the solar facilities goes away after the lifespan of the panels and the panels are removed. D. Pierce responded the deed restriction remains.

ADJOURNMENT

It was moved by D. Frank, seconded by S. McNicol and carried to adjourn the meeting at 8:55 PM. All members present voted **AYE**.

Respectfully submitted,

Diane Laudenschick, Secretary