

MINUTES

7:30 PM

PRESENT:

T. Ciacciarelli
R. Dodds
P. Lubitz
J. Mathieu
S. McNicol
E. Niemann (7:50 PM)
P. McCabe, Engineer
D. Pierce, Attorney

ABSENT:

L. Riggio
J. Strasser
M. Synchronick

CALL TO ORDER

The meeting was called to order by D. Laudenbach 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 MATTERS

J. Mathieu was nominated as substitute chairperson for tonight's meeting by S. McNicol, seconded by R. Dodds and carried. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Mathieu, who **ABSTAINED**.

Block 9, Lot 13 – Lower Oak Grove Road – Schlachter – Minor Subdivision – Determination of Completeness

G. DeSapio, attorney, was present for the application this evening. He stated most of the comments of T. Decker's review letter of February 5th have been satisfied but there remains one issue with the perc and soil certification. He is requesting the matter be continued until the March 13th meeting.

It was moved by P. Lubitz, seconded by R. Dodds and carried to continue the determination of completeness until the March 13, 2014 meeting. All members present voted **AYE** on **ROLL CALL VOTE**.

Block 15, Lot 8.01 – Route 12 – Penn Jersey Machinery, LLC – Determination of Completeness – Preliminary and Final Site Plan

G. DeSapio, attorney, was present for the application this evening. As a result of a discussion with D. Pierce, it has been determined that the Board of Adjustment has jurisdiction over a zoning officer's denial. The applicant consents to an adjournment of the determination of completeness for two months after the appeal before the Board of Adjustment.

It was moved by R. Dodds, second by P. Lubitz and carried to adjourn the determination of completeness until two months after the appeal before the Board of Adjustment. All members present voted **AYE** on **ROLL CALL VOTE**.

County Planning Board – Presentation – postponed until later in the meeting.

Approval of Minutes

The approval of the minutes of January 9, 2014 were postponed until the March 13, 2014 meeting.

APPLICATION STATUS

CORRESPONDENCE

Reviewed as per the agenda.

PRIVILEGE OF THE FLOOR

K. Pinkerton, Frenchtown Roller Rink, was present this evening. She made the following statements for the record to the Board:

“I was here in September due to the situation of Delaware River Tubing parking on my property at the Roller Rink. She stated when she was hear and asked for the minutes that were typed up from that meeting recently she was told there was no audio available. The minutes were not at all as she had recollected that night. I was told by D. Pierce it was not a significant change of use. The minutes say it was a significant change of use because she has parking for cars for her roller skating business. There is parking for tubing. There are buses that go through the parking lot for her roller staking business and buses for the tubing business. She sells admission tickets and so does the tubing business. However, since it was a different business that a site plan review would have to be filed for it. She is sorry that E. Niemann is not here right now but if you all remember that evening, Elaine sat right here and specifically said the site plan review would depend on whether Mr. Crance got his variance on his piece of property down on Route 29. The site plan review would be one way if he got his variance or the site plan review would be another way if he did not get his variance. That was not in the minutes at all. I was a little perturbed that I could not get an audio for that evening. I had a discussion with R. Lerch, one of my neighbors and told him that she had come out to this meeting in September and told him what transpired at the meeting. The next thing I knew was that he was out here asking for the audio of that meeting and that audio was not available. It is just a little coincidental to me. Irregardless, it did not work in July, worked in August and did not work again in September. It was apparently working in October. I did

request repair bills and what was wrong with it and was told there are no repair bills. M. MacConnell said that someone came on October 30th and found out the plugs were plugged in improperly. I don't understand how it worked October if those plugs were still plugged in improperly on October 30th. The bottom line is there is no audio to prove one way or the other what was actually said that evening. Elaine you are here now and I was explaining how I was told that evening that it was not a significant change of use although and I explained already, and the minutes say I that was told it was a significant change of use but I was told that evening that a site plan review would be needed and if you remember, you sat here and you explained it would be different depending whether Mr. Crance got his variance on his property. The site plan review would have to include this, this and this if he got his variance or it would include this, this and this if he did not get his variance. That is how I remember Elaine speaking about it. Irregardless of what actually happened at that meeting on September 12th, we, I guess, won't really know because there is no audio. At this point and time I came here in September and asked what I needed to do and this is what I was told needed to be done. In the meantime now I have Mr. Barczyk calling me and tell me that I have to get a new variance on my property. My variance that was done in 1974 says to build a roller skating rink to provide recreational use to the citizens of the Kingwood community residents as well as surrounding residents, including girl scouts, boy scouts, camp groups, school groups and others. Now, what they are trying to say is that it should only include roller skating and I have never seen it that way. It is for recreational use. I have done many things with that roller rink. I have done aerobics. I have done zoomba. I do dances. I do all kinds of things in that roller rink because it is for recreational use not specifically roller skating. Now if I park cars I don't understand while talking with Mr. Barczyk. I have had conversations. I don't understand what the difference between parking a car for people to come up for roller skating or a car for people to come up for tubing. It is a car. I have buses that go through my parking lot. Ms. Diana little Evans seems to think that I am not allowed to have buses in my parking lot, which is absurd. I have been running this business since 1984. That is 30 years that I have been running this business. It has been there since 1975 that is when they started building. We opened the doors in 1976. These people that live there that are doing the most complaining have moved there less than 20 years ago. They knew they were moving into buying a house next to a piece of property that does a commercial business. It is like telling an airport because some neighbors don't like the noise from the airplanes going overhead that they can't fly airplanes anymore. I am sorry this to me is absurd. I am sorry I can't say that I, in any way shape or form, agree with what is going on. So and I am angry at this point. I really am angry at this point and time.

E. Niemann inquired if there has been a conversation with D. Pierce about this issue.

J. Mathieu stated the Board has just listened to Kay.

K. Pinkerton continued: "just listened to me express my aggravation. I am very disheartened because I feel. I am going to come out and say it. I feel very betrayed by this community. I really do. This takes place two or three months out of the year. It is on a piece of property that is already zoned for a commercial/recreational business. I mean what can I say.

J. Mathieu inquired if the variance for the roller rink is being challenged?

K. Pinkerton stated that is what is being challenged. Ms. Evans and her lawyer are challenging it.

J. Mathieu inquired of D. Pierce if he felt comfortable commenting on the variance.

K. Pinkerton further stated that D. Pierce has seen the variance.

J. Mathieu stated he does not know if D. Pierce is in a position to make an interpretation this evening. He might be willing to or able to discuss whether this Board or any Board in the Township has any responsibility to change the variance, nullify it, or to accept the fact that it is legitimate or whatever.

D. Pierce stated the variance as it was granted is valid and stands. Someone cannot challenge a variance that was granted 40 years ago. The problem he has with the situation is that, from his recollection, the variance was very specific to the use for a roller rink and it had hours of operation included in that resolution. The statement that K. Pinkerton made that is it approved for a commercially zoned property is not accurate. It is a residential/agricultural zoned property with a variance to allow the particular use of the roller rink. The way variances are interpreted under the law is that the variance is limited to the terms of the variance. It was not a variance for all possible recreational uses. There were hours of operation and a specific use. Mr. Barczyk is saying the Delaware River Tubing use is not covered by the variance that was granted in 1974. My professional expectation at this point is that a court reviewing the variance in the context of Delaware River Tubing's use on the property is that it is not covered by the variance and you would have to have a new variance approval to include that or any other recreational operations you would want to do that are changing the hours of operation and the nature of the use approved in that variance. He stated K. Pinkerton could go back to the Board of Adjustment and seek an additional variance to expand that operation and that might not be inappropriate. It would have to, in his opinion, go through that process to have protection under a variance.

K. Pinkerton commented further: "When I was here in September I was told it was just a site plan review that needed to be done. In that variance it says to build a roller skating rink and for recreational use. To her, there are many things that you can do with a roller rink besides roller skating. To her, it does not specify roller skating if you want to get to the nitty gritty of it."

J. Mathieu inquired when she makes that statement would that mean anything within inside the roller rink or anything on the roller rink property.

K. Pinkerton responded she would say anything on the roller rink property.

J. Mathieu stated, in his opinion, he could understand if the activity was held within the confines of the roller skating rink, it might be appropriate to have another use besides roller skating but an activity held outside the confines of the building might require additional approvals. He has not seen the variance. He suggested what may have to happen here is she may want to see exactly where that fine line is between what the variance covers.

K. Pinkerton stated the tubing is not taking place on her property. Just selling the tickets, parking the cars and the buses are coming through.

J. Mathieu stated a problem could exist and could be argued that selling the tickets and having the parking there for an activity that is offsite, even onsite, might be considered a separate business. D. Pierce agreed with J. Mathieu's comment.

K. Pinkerton that is why they were talking about the site plan review.

J. Mathieu stated once the zoning officer makes a determination it may, ultimately, be a site plan review but she has to go to a Board of jurisdiction to hear that complaint and to interpret that variance. He stated Mr. Barczyk cannot come and tell her that a variance granted through the legal process is illegal. It is everything that is

beyond what was approved at that time is what the zoning officer is addressing. She may well have an argument of what is recreation and what are those activities. Did the resolution specifically say only roller skating? The Board of Adjustment would have jurisdiction because it is a different use. The original variance came from the Board of Adjustment. His concern, in his view, is the roller rink is legal and cannot be challenged by the zoning officer as long as she is operating within the confines of the variance that was granted. The conditions of approval are indicated in the resolution. He doesn't know how to tell her to proceed. His thought would be if Mr. Barczyk is telling her that there is some challenge to it, he would suggest her going to the Board of Adjustment. D. Pierce agreed with his comment to appearing before the Board of Adjustment.

K. Pinkerton stated she has another question and is not sure if this Board can answer it or not. She has so many questions about this whole situation. She doesn't understand if her variance did not cover what was being done up there, why did Kingwood Township give Mr. Crance an electrical permit three years ago and she was not told at that point and time that what he was doing was not covered under her variance.

D. Pierce responded he cannot tell her one way or the other how that happened or why it happened. He has no knowledge of it.

J. Mathieu stated the appropriate thing, if she is concerned about that is to go and find out whose name that permit was pulled in. He may suspect that he may have pulled it in his name as long as he had a licensed electrician, which he would have to have to pull the permit. There is a spot on the permit that seeks to know who the owner is of the property.

K. Pinkerton responded they knew where it was.

J. Mathieu stated he may have sent an electrician in and pulled the permit and said we going up to the roller rink and we are going to put in an outdoor receptacle in and the guy said okay. You need to find out.

K. Pinkerton further commented for the record: "The inspectors came up and inspected the ditch, the whole nine yards. They dug a big ditch from the electric pole. It wasn't just an electrical outlet."

J. Mathieu could have been pulled by the contractor, which is most likely was, if you didn't know that it was being done at the time. There is no requirement for the building department, depending on what it is, to obtain zoning clearance. It is not a big deal. If you are going to put an addition on your house or deck or anything involving the footprint of your house then that does trigger a requirement for zoning clearance.

K. Pinkerton further commented for the record: "We all knew this business has been going on for ten years and I have never been told not once, until just this past summer when this woman who is a nut job and driving us all crazy, got on her bandwagon."

J. Mathieu stated he cannot comment on her mental state or anything else but the problem is that when you are doing, in life what can happen and we all understand what happened, someone can get a bee in their bonnet and get really upset at something, then carry it on and you find that suddenly someone shows up at your door, zoning officer or other official, and it is an unfortunate thing.

K. Pinkerton commented further: "It will cost me thousands of dollars. Like really".

J. Mathieu stated he doesn't think she will understand it until she goes to the Board of Adjustment. The roller rink can continue to operate exactly as it is and whatever is going on with Mr. Barczyk is something that has to go to the Board of Adjustment. He can speak for himself that the rink is an absolute asset to the community and does not think anyone in this room would argue that the rink should be closed or that any use should be changed or anything else. He thinks that everybody feels very strongly that whatever can be done to assist you within the bounds of the regulations and law, certainly the Township would want to do that for her.

K. Pinkerton further commented for the record: "Guess that's it."

J. Mathieu stated she should buck up and go to the Board of Adjustment and stated he thinks it will work out. He has all the faith in the world that it will.

K. Pinkerton thanked the Board.

G. Crance, Delaware River Tubing, stated he would like to thank the ones that granted the variance with the variance board, especially the ones that voted yes. He stated he would like to address a couple of points that just came to his mind during the Board's conversation with K. Pinkerton. He made the following statements for the record to the Board:

"Just to clarify, the permit for the electrical did come J. Barczyk. I had a long conversation. I came to him three or four times. It was clear what we were pulling the electric permit for. It was clear it was for the tubing business and absolutely nothing at the point was said about the variance. It only came up after D. Evans got her teeth into it. Just for the record, that is 100% how that happened. He did it personally so he knows. Second issue is as far as the use on the property. By the way, want to work 100% with Kingwood. This is bothering us as well because things aren't what they appear what they were. If I seem a little frustrated it is only for that reason. I want to be an asset to the community. I want to bring a lot of tourism in. I want to keep it eco-tourism friendly. Provide safety and organization on the river. I believe it is here to stay so no matter what happens with me. It is not going anywhere and I will tell you also what didn't come up in the last meeting was part of the problems I had with the state was some misunderstandings with the park ranger. Once we got our permit and we operated this past summer, the people at DEP actually apologized and told him that the State Park police did a complete study on our business and totally liked our tubing business, thought our customers great, our staff was good and the only problems they had were with the private tubers. So take away our regulating it because we really do watch over the private tubers. I am trying to let you know a little bit of what is going on down there. On a good day 600-700 private tubers. Take us away and a matter of fact, we closed this past summer at 8' and you guys know there were two deaths in our section alone both days when we were closed. We have had one in 28 years unfortunately under our watch. It bothers him all the time. It was two years ago for those who probably know about that but we have had in 28 years two deaths and it was the days we were closed. We bring and we are trying to get the State to work with us to close it down for tubing. We are not looking to control the river but at least for the tubing safety. If we are going close as their concessionaire, let's close it for the State. I mean for the public because there is no one out there, no safety, it is dangerous. They shouldn't go out there at that height. So, that is something else we are working on. I just brought it up at the last meeting and just noticed a couple days ago they had a hearing to close the boat ramps at a certain height for safety and that was right after I brought it up to them. So, hopefully they are following my lead a little there. Now, as far as the couple other points, you brought up that it is just for roller skating. Well to me that is like a mechanic and he now decides that he will do some body work and some painting and he will have the cars outside while they are drying. He is no longer in his building doing just the work. He's got now some cars that are drying outside because he painted them or however mechanics do their thing. When he

started he was just a mechanic shop and now he has expanded to painting. I don't think that a variance would be necessary. Just using that as an example. If something were to expand a little bit, if it is recreational use, you know where we are not looking to put up structures. We are seasonal. We are two months. We are completely hidden. It is very minimal impact and brings in a lot of tourism dollars. I think that one person who is really rallying against the thing, D. Evans, it is really out of vindictiveness not even caring about the zoning because we stopped buying all the marketing material from her. You know we bought five or six years. We bought all of our marketing materials from D. Evans, hats, shirts, uniforms. As soon as we stopped is when she started on this. So, it is not even the care of why she is doing it. It is because I think she is angry. The Township is being pulled around by someone who has a vendetta and I think we have been doing this 10 years. I just feel that trying to do everything by the book. You guys gave me my permits for the Hot Dog Stands for close to 28 years. We came to you when we opened the tubing business. I was told by the Township attorney back then don't worry about it what you are going fits. Unfortunately, I don't have that in writing. We went ahead and started. We have been doing a fundraiser with the existing mayor back then was J. Burke. We had been doing it for 10 years. We have been on the front cover of the Star Ledger and Hunterdon Democrat. Everyone was proud of the business. We won the 2011 Governor's Tourism Award and the 2008 Diamond Tourism Award. We did the Kingwood Day 5 years in a row. I brought all my buses and boats to Kingwood. There is no way they can say they did not know. I donated money every year to Kingwood and started just recently donating to the Frenchtown and Kingwood fire department. So we are giving back that way. To say that we do a fundraiser with the existing Mayor for 10 years. We are in the front of the papers. We are winning the governor's awards, doing Kingwood Day and then we came to you for the electrical permit and we got granted that. Then I buy a piece of property that is dilapidated that the Township foreclosed knowing I was going to be the sole bidder and I paid a lot of extra money than what that property was worth, with no resentment because I love Kingwood. Don't love this part but Kingwood has been really good to me over the years. Again, we got an electrical permit and then people say I just do whatever I want but came to you guys to get the permits on the piece of property that I bought from you guys. I am trying to do everything right. Then my attorney had a conversation with D. Pierce that I am standing in the other room. We didn't realize that it was going to run into all this cost and expense and that once we get the zoning done on this property that we won't know is anything going to be needed up top. There was uncertainty and at most a site plan because it is just an extension of the existing variance. I don't remember the word. It was an add-on to the variance. So, we are like okay if that is necessary, a site plan, okay. We told them once we get this we wouldn't know how the flow of traffic works, so we would need a season or two. I heard them discuss that we would have a couple seasons if we did need to do anything. So as soon as I get the variance approved I get a notice a couple weeks later. That goes against, not only, what she supposedly heard at the meeting, what as I understood the meeting with D. Pierce and I am not trying to put words in his mouth, but that is what I believe I overheard and my attorney overheard. I just feel like one person derailed this whole thing. It is important to know you guys that I am upset as well now and we unfortunately, had a perfect storm. We had the worst weather in the history of the business. My competitor who did 66,000 people did 12,000 people, unbelievable. Our numbers were in half. We had our insurance increase because of the drowning that we had. Then we had the variance process which cost me \$100,000 because of the way it got dragged out. Maybe I had some expensive professionals, I don't know. I paid for the Township, I think was somewhere in the twenty some thousand range alone. Never mind our professionals and environmental, all the things you have to do. So, I am not in a position. I can't speak for Kay but I don't think she is. I am not in a position to get a variance at that cost. I don't think I should have to. I think at most it should be is a site plan and I think we should be given a reasonable amount of time to do a site plan. Now, you are saying that the notice is already out and has to appeal to the Adjustment Board but I don't think the notice should have went out. I think that it should have been kept to possibly a site plan and we should have had a couple seasons. "A" we don't have the money and "B" the township clearly knew we were there for 10 years and we had done everything by the book. We didn't try to keep anything secret or do anything without your

permission and I really loved Kingwood right up until this whole little muck. Thank you for letting me ramble a little bit.”

J. Mathieu stated he thinks it is useful to hear his concerns. His suggestion would be that Mr. Crance’s attorney speak with D. Pierce to make a determination if a variance or a site plan is required.

G. Crance further commented: “He will arrange for his attorney to contact D. Pierce within a day or two. Itated it is very frustrating to now after 10 years with the expectation that at most it would be a site variance and would be a couple years. I wouldn’t have bought the property from the Township if I knew I would have to do this. I wouldn’t have went through the variance only with the property thinking that I would need a site plan at most and I would have some time. I now feel that both of those are being pulled out from under me and unfortunately, I am not in a financial position that I don’t know if I can open this summer anyway if it requires a Board of Adjustment meeting. It is very likely that I will have to take a different legal avenue or I will not be able to open. The Board of Adjustment would be very difficult.”

J. Mathieu stated Mr. Crance needs to have the contact between his attorney and D. Pierce very soon and he thinks this is going to have a good outcome for everybody. That is his feeling. He has been on this Board since 1988 and there are very few losers that he has seen and he doesn’t think he is a loser.

G. Crance further commented: “Someone could joke around about a good outcome for everyone except himself. I wanted to make it clear for the record that his parents owned the property right in front of Point Pleasant and sold the property for double what they paid. They are literally right in front of it. D. Evans is across a major highway. I don’t even think she will be a loser in this. She will get over it very quickly and won’t even notice the business. She didn’t mind selling us the stuff for five years so it wasn’t a problem with her then. Only became a problem after I stopped buying from her. I thank the Board and Township for supporting him all these years and hope they can work this out.”

J. Mathieu thanked G. Crance for coming before the Board and expressing his thoughts.

P. McCabe left the meeting at 8:24 PM.

County Planning Board – Presentation

E. Niemann stated she has not been provided the information from the County. She reported that last Thursday there was the first open house in the community regarding the grant providing the Township with funding for the feasibility study on the Eastern Gateway Village Overlay and Transfer of Development Rights and all the complicated pieces that need to fit together. She considers it Phase I of the public outreach. It was very well attended. Over the course of three hours, she would estimate that approximately 50-60 people attended the open house. There will be at least one or two more open houses between now and May.

ADJOURNMENT

It was moved by S. McNicol, seconded by P. Lubitz and carried to adjourn the meeting at 8:30 PM. All members present voted **AYE**.

Respectfully submitted,

Diane Laudenschick, Secretary