

MINUTES

7:30 PM

PRESENT: R. Dodds
P. Lubitz
J. Mathieu
S. McNicol
J. Strasser
M. Synchronick
L. Voronin, Alt #1
T. Decker, Engineer
D. Pierce, Attorney

ABSENT: T. Ciacciarelli
E. Niemann
L. Riggio

CALL TO ORDER

The meeting was called to order by M. Synchronick at 7:30 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

M. Synchronick welcomed the new Board members C. Ely and L. Voronin.

PRIVILEGE OF THE FLOOR

D. Frank, 17 Muddy Run Road, stated he has a couple of concerns about the noise. He is not sure how to reach Con Edison to resolve the sound issues. The noise starts at around 5:30 in the morning and runs until 8:00 in the evening. He is hoping the issue can be resolved without performing a sound study. The loudness of the sound is dependent on your physical location. It is much louder at his garage than at his mailbox.

T. Decker responded that an inspector from his office went out to the site to check two things, the location of the inverters and the noise. The inspector could not hear the inverters at the fence line. Residents living near the facility are more in tune to what the usual background noises are in their area. He recommended the zoning officer go out and measure the sound. If the sound exceeds the township ordinance limits at the property line in the morning and evening, the applicant will have to comply with the ordinance requirements. He can provide the neighbors with a contact at ConEd. He can attempt to arrange a site meeting. ConEd is going to want some kind of tangible quantifiable number at the property line.

P. Lubitz suggested ConEd be contacted to see if they would offer some voluntary assistance in reducing the noise. He stated there was an issue in the Township with a cable box. CenturyLink installed a wood fence to deaden the sound. There was a not a large cost to the remediation but it mitigated the sound.

T. Decker inquired of D. Frank of how loud is the noise. D. Frank stated it is quite noticeable, like a fan running. It is present in the morning and late at night but not there during the day. If the inspector was there noon time he may not have heard it if there were other noises in the area.

D. Frank indicated the original plan provided for smaller inverters farther into the property. The very early testimony from Sundancer indicated there would be no background noise. Is the current developer accountable to the original Sundance approval?

D. Pierce stated the Board did make a condition of approval to limited or restrict the noise to the ordinance in effect. He doesn't remember any specific testimony of noise.

T. Decker stated the testimony regarding noise was limited to the fact that the inverters had a fan to cool them which generates a sound that was on the order of an air conditioning unit.

D. Frank stated it sounds more like a fan rather than a transformer. He stated they do make white boxes for fans. There is only one inverter that is impacting them. He stated the original plans from Sundancer had multiple smaller units and they were farther away.

T. Decker indicated, on page 4, on the overhead, where the inverters were located. The developer went back to the state and the facility was limited to a 10 megawatt system. The lower field on Muddy Run Road was abandoned and they eliminated panels in other areas. The panels were kept away from the old farm structure. The developer placed that site and another site in an easement to protect them from disturbance. He stated the pads do look larger but as far as the equipment that is installed it is not under his purview. The installation is under the building department under the electrical code section. If larger inverters were installed than originally planned he does not know since it falls under the building department. Each inverter can handle 500kw. Based on the system, they would need 20 inverters. There was some latitude with where the panels were installed. The pathways were consistent. In one location there may have been only one inverter where now there are a couple. No sound study was required during the testimony. At this point, it is subjective for sound impact. The landscaping is in place as well as the installation of the berm. There are some areas where the trees are dying but there is a 2 year maintenance guarantee which requires the replacement of the dead trees. They have agreed to install some additional evergreen trees along the fence on Barbertown Point Breeze Road. They are currently in the process of decommissioning the staging areas and restoring the parking areas to an uncompacted condition. They still have the silt fence around the area. There was a question brought up about inadequate drainage creating some ponding behind T. Burke's house. The developer has been alerted to the issue. Some minor grading should alleviate the ponding. The berms were installed to provide more of a buffer from T. Burke's house with breaks to provide drainage. The breaks need to be cleaned up to provide positive drainage. He reviewed the plan on the overhead and it seems as if 4 inverters were installed. The original plan had 20 inverters which were paired up at 10 locations.

D. Pierce stated at this point the Board does not have jurisdiction to require the developer to do anything. The Board gave them approval and their obligation was to comply with the noise ordinance. There is nothing that would prevent or prohibit the neighbors or Township from contacting ConEd and inquiring if they would like to be a good neighbor and alleviate the noise issue. Unless the noise is in excess of the noise ordinance, there is nothing the Township can do to change it.

T. Decker suggested possibly asking them to meet at the site at 6:30 in the morning on a sunny day.

P. Lubitz stated the Township does not desire to get into a contentious relationship with them. It is a lesson to use that any sound can dramatically change the quality of life. When future applications come before the Board it is something the Board should keep in mind.

D. Frank stated the original berm was supposed to go to the 500-year flood study. T. Decker indicated on the overhead the end of the berm. He stated the landscaping does continue past the point of the end of the berm. D. Frank provided his number to T. Decker.

D. Frank thanked the Board for their time.

K. Garay, 5 Muddy Run Road, stated some days you do not hear anything but some days it is like a non-stop motor running when he sits on his front porch. When you walk to the fence the noise is not bad. He inquired what his recourse was to stop the noise since everything is approved. The noise seems to funnel in one direction. On a Sunday afternoon he was sitting outside and boom there it was. Certain days the noise is much worse than others. It seems to be louder on sunnier days. It sounds like everyone has a generator running as in a mass power outage.

T. Burke, 112 Barbertown Point Breeze Road, stated there is water ponding up behind his house. He was also concerned about the noise. T. Decker responded his inspectors were out and saw the water ponding. The developer should be able to go back there and grade it out and bring it back to their property.

Wydner – Block 14, Lot 20- State Route 29 – Determination of Completeness

Cynthia Snyder and John Snyder were present for the application this evening.

T. Decker stated it is a minor subdivision creating a lot around the existing dwelling and some of the outbuildings. The remaining property is intended to go into farmland preservation with an area of exception for a future home. From a completeness standpoint and given the nature of the project, it is appropriate to grant the waivers and schedule a hearing.

T. Decker provided the following memo to the Board:

On April 18, 2014 our office received documentation in support of a proposed Class I Minor Subdivision for Block 14, Lot 20. The subject property is currently in an agreement with the State Agricultural Development Committee (SADC) for farmland preservation. Documentation provided consisted of the following:

1. Plans titled "Plan of Survey & Subdivision, Lands of Elizabeth E. Wydner & Harold Wydner" as prepared by Harris Surveying, Inc. dated February 24, 2014.
2. Subdivision Application Form executed on April 7, 2014.
3. Letter from Elizabeth Wydner dated April 5, 2014.
4. Letter from the New Jersey State Agriculture Development Committee dated March 17, 2014.
5. Map of Kingwood Township's map of Preserved and Targeted Farmland prepared by Banisch Associates, Inc.
6. Letter from Harris Surveying, Inc. dated March 22, 2014 providing project summary and written request for waivers.
7. A copy of the Kingwood Township Subdivision Checklist.

Completeness Review

Our office has reviewed the above submitted documentation for completeness in accordance with the current Kingwood Township Subdivision Checklist as last amended February 7, 2013. We have identified the following items as outstanding or in need of confirmation by the Board Secretary. All other items have either been provided or are not applicable to the proposed application.

T. Decker reviewed his memo:

A. Administrative

- Item 5. Copies of hydrogeological report and pump testing as required by §153-29 & §153-30. *Applicant requests a waiver due to the lack of proposed improvement at this time. We recommend granting a waiver.*
- Item 8. Copies of a stormwater management plan and supporting calculations. *Applicant requests a waiver due to the lack of proposed improvements at this time. They suggest a condition of subdivision approval requiring the owner to provide the plan and report at the time of proposed improvements. We recommend that the Board grant a waiver for completeness purposes.*
- Item 9. Copies of an affordable housing plan. *Applicant requests a waiver as the subdivision is for agricultural purposes and outside the requirements for affordable housing. We recommend granting a waiver for completeness purposes and defer to the Board Attorney for direction regarding applicability.*
- Item 12. Proposed block and lot numbers as approved by the Tax Assessor have not been provided. *Although not requested, we recommend granting a waiver for completeness purposes .*
- Item 14. Proof of submission to NJDEP for a Freshwater Wetlands Letter of Interpretation. *Applicant requests a waiver, references the NJDEP I-Map as the origin of the wetland limits as shown on the plans and notes that there are no wetlands shown within the non-severable area of exception. The NJDEP I-Map wetland delineation is approximate and typically subject to issuance of a Letter of interpretation based on site specific field delineation. However, the property is proposed to be preserved as farmland and the non-severable area of exception is either currently improved with farm buildings or actively farmed. We recommend granting a waiver. Granting of a waiver does not release the property owner from compliance with any applicable NJDEP regulation.*
- Item 20. Submission of the Threatened/Endangered Species Survey Data Sheet, Appendix A. *Applicant requests a waiver as any proposed construction within the non-severable exception area will be within a currently cultivated farm field. We are in agreement with the applicant's assessment and recommend granting the waiver for completeness purposes.*
- Item 21. Submission of an environmental impact and assessment (SEIA). *Applicant requests a waiver as any proposed construction within the non-severable exception area will be within a currently cultivated farm field. We are in agreement with the applicant's assessment and recommend granting the waiver for completeness purposes.*
- Item 22. Threatened and endangered species investigation. *Applicant requests a waiver as any proposed construction within the non-severable exception area will be within a currently cultivated farm field. We are in agreement with the applicant's assessment and recommend granting the waiver for completeness purposes.*

B. Plan Requirements

- Item 7. Proposed deeds to lots and lands remaining have not been provided. *Applicant requests a waiver at this time and agrees to provide a metes and bounds description and deeds for review upon approval of the subdivision. We recommend granting a waiver for completeness purposes.*
- Item 22. Deeds to contain wording "Approval of this subdivision by the Planning board shall not be construed and is not to be considered as an approval of a sewage disposal system or design, ..." *Applicant requests a*

waiver at this time and agrees to provide deeds for review upon approval of the subdivision. We recommend granting a waiver for completeness purposes.

- Item 24 Deeds to contain wording regarding the Right to Farm Ordinance. *Applicant requests a waiver at this time and agrees to provide a metes and bounds description and deeds for review upon approval of the subdivision. We recommend granting a waiver for completeness purposes.*
- Item 28 Location and details of conservation easement markers. *Applicant has noted this item as Not Applicable. We recommend granting of a waiver for completeness purposes. The Board should discuss whether marking the existing triangular conservation easement located in the southern portion of remaining Lot 20 is appropriate.*
- Item 29 Completed Constrained Area Maximum Tract Yield Calculation. *Applicant requests a waiver citing that the subdivision is prepared for agricultural purposes and is not looking to maximize the lot yield. As a farmland preserved property, future subdivision will not be permitted. We recommend granting a waiver for the reasons given.*
- Item 31 Mapping of steep slopes in accordance with Chapter 114, Steep Slope Conservation. *Applicant requests a waiver as steep slopes are not present on remaining Lot 20 or within the area of exception on proposed Lot 20.03. We recommend granting a waiver.*
- Item 37 Calculations demonstrating the adequacy of existing and/or proposed drainage and/or water management facilities. *Applicant requests a waiver at this time as there are no immediate plans to improve proposed lot 20.03. We recommend granting a waiver for completeness purposes.*
- Item 39 Lot grading plans, including proposed spot elevations, grade at building, floor elevation, proposed drainage patterns, etc... *Applicant requests a waiver at this time as there are no immediate plans to improve proposed lot 20.03. We recommend granting a waiver for completeness purposes.*
- Item 40 Soil erosion and sediment control plan in accordance with Chapter 103, Soil Erosion. *Applicant requests a waiver at this time as there are no immediate plans to improve proposed lot 20.03. We recommend granting a waiver for completeness purposes.*

It was moved by J. Mathieu, seconded by R. Dodds and carried to deem the above application complete and schedule it for a hearing on June 12, 2014.

S. McNicol stated the Environmental Commission discussed the application at their meeting. They discussed plan review #7 regarding well testing. The Environmental Commission would like an assurance that the well testing would be required prior to the issuance of a building permit. T. Decker responded it is not a completeness item.

All members present voted **AYE** on **ROLL CALL VOTE**, except L. Voronin, who **ABSTAINED**.

COAH – Banisch & Associates

D. Banisch provided the following memo to the Board:

COAH's new proposed third round rules were released on Wednesday, April 30, for the period beginning November 14, 2014. The rule proposal identifies the proposed new municipal affordable housing obligations. The purpose of this is to identify the obligations assigned to Kingwood Township in the proposed rule and provide information on the proposed rule based upon our preliminary review.

Third Round Substantive Rules – for period beginning November 17, 2014.

There are three components of need identified in the rule proposal, as follows:

Proposed N.J.A.C. 5:99-2.1 General

(a) The Affordable Housing Obligation for each municipality shall be comprised of the following:

1. Rehabilitation share;
2. Unanswered prior obligation;
3. Fair share of prospective need.

At proposed N.J.A.C. 5:99-1.2, Definitions, these terms are identified as follows:

“Rehabilitation share” means the number of deficient housing units occupied by low- and moderate-income households within a municipality, established in Appendix B that must be addressed in a Fair Share Plan.

“Unanswered Prior Obligation” means the sum of the 1987-1999 and the 1999-2014 prior obligations as determined in Appendix D reduced by past affordable housing completions and publicly subsidized affordable housing that is eligible for crediting pursuant to N.J.S.A. 52:27D-307(c)(1) and N.J.A.C. 5:93-1 et seq..

“Fair Share of Prospective Need” or “Fair Share” means a projection of affordable housing needs based on development and growth that is reasonably likely to occur in the region or municipality during the period of 2014-2024.

The rule proposal identifies the following proposed third round affordable housing obligations for Kingwood Township:

- **Rehabilitation: 0**
- **Unanswered prior obligation: 59**
- **Fair share of prospective need: 36** **(95 total – no rehab)**

This compares to COAH’s 2008 3rd Round Growth Share assignment of affordable housing obligation to Kingwood Township, as follows:

Rehabilitation:	11	
Prior round obligation:	19	
Growth Share obligation:	65	(95 including rehab)

This obligation resulted in the need for a total of 84 new construction units to be delivered by 2018, depending on the amount of actual growth in the Township between 2004 and 2018. The May rule proposal (1) eliminates the rehabilitation obligation, (2) raises the new construction obligation to a total of 95 units to be delivered over a 20-year time frame.

Proposed N.J.A.C. 5:99-2.3 **Unanswered Prior Obligation**

(a) Unanswered Prior Obligation includes the sum of the new construction obligation for the 1987-1999 period and the prior need for 1999-2014 as determined through the methodology set forth in Appendix D. The prior obligations are reduced by past affordable housing completed and publicly subsidized affordable housing eligible for crediting pursuant to N.J.S.A. 52:27D-307(c)(i) and N.J.A.C. 5:93-1 et seq.

(b) Municipalities shall be governed by the standards in N.J.A.C. 5:93 et seq. to address Unanswered Prior Obligations but shall not be required to address more than 50 percent of the Prior Round Obligation until such time as the entire Fair Share of Prospective Need has been constructed.

As per proposed N.J.A.C. 5:99-2.3 (a) above, Appendix D identifies the Township’s prior obligation for the 1987-1999 period at 20 affordable units. The prior obligation identified for 1999-2014 is 48, which together with the 1987-1999 obligation totals 68 affordable units. Appendix D identifies 9 “past affordable housing completions” that are deducted from this total to yield the 59 units of “Unanswered Prior Obligation” assigned to the Township. COAH has not applied additional deductions related to subsidies, vacant land and buildable limit to the calculation identifying the Township’s total 59 unit unanswered prior obligation.

On page 89 in Appendix D, an explanation of the Unanswered Prior Obligation includes the following statement: “The Net Prior Obligation is to be delivered one-half from 2014 to 2024, and one-half from 2024 to 2034.” This statement is not entirely consistent with the provision underlined above in proposed N.J.A.C. 5:99-2.3(b) and will require clarification from COAH as to how the timing requirement for delivery of the unanswered prior obligation applies to “such time as the entire Fair Share of Prospective Need has been constructed.

Proposed 5:99-2.4 Fair Share of Prospective Need

(a) The Fair Share of Prospective Need is a projection of low and moderate housing needs in a municipality based on development and growth that is reasonably likely to occur in the region or municipality for the period of 2014-2024 as determined through the methodology provided in Appendix C and includes the reductions and limits set forth at N.J.A.C. 5:99-3.2, 3.3, and 3.4. This projection includes reductions for caps and Buildable Limit as set forth in Subchapter 3.

(b) A municipality that has an Unanswered Prior Obligation of less than zero and did not receive a vacant land adjustment for the 1987-1999 or 1999-2014 period may use the surplus units to reduce its Fair Share of Prospective Need obligation.

- N.J.A.C. 5:99—3.2 is the one thousand unit cap reduction (not applicable to the assigned obligation);
- N.J.A.C. 5:99—3.3 is the proposed buildable limit cap. Kingwood Township’s buildable limit has been calculated at 178 units. In order to utilize this cap for a reduction to the municipal obligation (fair share prospective need and unanswered prior obligation), the municipality must address the criteria set forth in proposed N.J.A.C. 5:99-3.3(c), as follows:

(c) Municipalities that receive a reduction based on Buildable Limit shall evaluate the existing municipal land use map and inventory for areas that may develop or redevelop to identify additional opportunities for the creation of affordable housing. These may include:

1. Zoning amendments that permit apartments or accessory apartments
2. A market to affordable program
3. Overlay zoning requiring inclusionary development.
4. A redevelopment area that includes affordable housing

- N.J.A.C. 5:99—3.4 is the 20 percentage cap (not more than 20% of total housing units in the municipality in 2010 is required by this adjustment (not applicable to the assigned obligation).

Inclusionary Zoning

The proposed rules substantially revamp the inclusionary zoning technique provisions for affordable housing creation.

The presumptive inclusionary set aside in the rules is 10% affordable units in a market-rate development. In order to require a higher set aside than 10%, a municipality is required to prepare and submit a (very) detailed economic feasibility study according to specific requirements identified in the rule proposal. Conversely, reduced affordable housing densities or increased densities to ensure the economic feasibility of an inclusionary development may be approved by COAH under a joint application submitted by a municipality and a developer.

Other Techniques

The rules list the following additional techniques for addressing affordable housing need that were included in the third round growth share rules:

- 5:99-7.3 New construction; municipally owned land and 100 percent affordable construction
- 5:99-7.4 Community residences for the developmentally disabled
- 5:99-7.5 Redevelopment and Rehabilitation pursuant to the Local Redevelopment and Housing Law, N.J.S.A 40A:12A-1 et seq.

The new proposed rules include:

- A limit of 25% age-restricted housing is identified. This may be increased if justified in the municipal population and demographic analysis included in the Housing Plan Element.

The new proposed rules do not include:

- A requirement for family housing and family rental housing.

Summary

COAH's proposed new Third Round Substantive Rules identify a two-tiered affordable housing obligation for Kingwood Township as follows:

- Unanswered Prior Obligation 59 affordable units
- Fair Share Prospective Need 36 affordable units

The proposed rules require that the municipality address the "unanswered prior obligation" in two phases, but not "until such time as the entire Fair Share of Prospective Need has been constructed." COAH has not identified a rehabilitation obligation for the Township under the proposed new third round rules. The proposed new rules rely heavily on the inclusionary zoning technique that has been revised substantially to require a maximum 10% (not 20%) set aside requirement in a market-rate development that may only be increased if justified through a detailed economic feasibility study according to requirements in the rules. Certain minimum requirements, such as family housing have been eliminated in the rules, however, non-inclusionary development techniques used to address the affordable housing obligation will require substantial municipal subsidies for affordable housing production.

We will provide additional analysis and information on the proposed new third round rules once we have a chance to conduct a detailed review of the new proposed rules.

We trust that you will find this information useful in your consideration of this matter.

The Board briefly discussed D. Banisch's memo regarding the Township's COAH obligations.

P. Lubitz stated the letter was written on a preview copy of the rules. The rules referred to in the memo have not yet been published. The rules were not promulgated by the COAH staff and they are working their way through the interpretation of the rules. There is a lot more discussion to come with possible litigation to follow. Currently, no one knows in Kingwood and no one knows in Trenton what the Township's obligation is regarding the COAH.

Approval of Minutes

It was moved by R. Dodds, seconded by M. Synchron and carried to approve the minutes of March 13, 2014 with the following correction:

Page 3 – ... was going to be developed into low income housing. E. Niemann responded a development was approved which was to contain an affordable housing unit.

All members present voted **AYE** on **ROLL CALL VOTE**, except S. McNicol, J. Strasser and L. Voronin, who **ABSTAINED**.

APPLICATION STATUS

BDAC – Block 23, Lot 17.02 – Deeds Released;

CORRESPONDENCE

M. Syrnick reviewed as per the agenda.

PRIVILEGE OF THE FLOOR

J. Snyder, Route 29, inquired if COAH protects the Township from a developer coming in and building houses. He works for NJ American Water and water is available at the top of Route 12. He has seen in other municipalities the larger developers coming in and building at a larger density than permitted by the zoning ordinance. The developers sue the Township and are able to build. An example is the development on Route 12 in Raritan.

M. Syrnick responded the Township does have certain lot size requirements in the Township. If the Township did not have an approved affordable housing plan and a developer came in and sued the Township, they might be able to build at a larger density than permitted by ordinance.

P. Lubitz stated the proposed new COAH rules change the equation from 5 for 1 to 10 for 1 for affordable units. If a Builder's Remedy were to occur, the previous obligation would have been a 5 for 1 equation for marketable units. With the proposed new rules the equation is 10 to 1. A developer could come in and build 100 marketable units and 10 affordable units.

R. Dodds suggested at the next Planning Board meeting the Board may want to review the scenic overlay requirements for setbacks. Currently, the ordinance requires a setback of one half of the lot depth with no maximum indicated. A resident did a calculation on a 36 acre lot with 1440' of frontage and 1100' of depth. With the current ordinance 18 acres of the lot are unusable.

ADJOURNMENT

It was moved by J. Strasser, seconded by R. Dodds and carried to adjourn the meeting at 8:30 PM. All members present voted **AYE**.

Respectfully submitted,

Diane Laudenschick, Secretary