

MINUTES

7:30 PM

PRESENT: T. Ciacciarelli
R. Dodds
P. Lubitz
J. Mathieu
S. McNicol
L. Riggio
J. Strasser
C. Ely, Alt #2

ABSENT: E. Niemann
L. Voronin, Alt #1

CALL TO ORDER

The meeting was called to order by Vice-Chairperson M. Syrnick at 7:31 pm.

NOTIFICATION

In order to ensure full public participation at this meeting, all members of this Board, and members of the public are requested to speak only when recognized by the Chair so that there is no simultaneous discussion or over-talk, and further, all persons are requested to utilize the microphones which are provided for your use by the Township. Your cooperation is appreciated.

Notification of the time, date and place of this meeting has been published in the Hunterdon County Democrat and Courier News, and has been posted in the Kingwood Township Municipal Building at least 48 hours prior to this meeting and has been filed with the Municipal Clerk.

PRIVILEGE OF THE FLOOR

D. Frank was present and stated he is pushing for the understanding of what we are going to do with the sound on Muddy Run. He has attended meetings for about the last 4 months. There has been a lot of conversation but he is no sure how fast it is moving along. He would like to help move things along. He has reached out to the manufacturers of the inverters and they do not provide a decibel rating for the inverters. He has obtained a sound meter and taken some readings. He has sent the readings to the Township Engineer. He wants to know what the next steps are going to be in regard to the sound on Muddy Run.

T. Decker stated a few weeks ago he had met with ConEd out in the field with the inverter manufacturer's representative and took some sound readings. They were taken at 8:30 in the morning. It was a sunny non-humid day. The sound readings were taken at various properties along Muddy Run Road, at the gate and at the inverters themselves, approximately 8' away from them. The testing was done by their equipment and he is not sure of the calibration. The readings were taken pointing at and away from the inverters. All of the readings were about 29.5 decibels. 50 decibels are permitted at the property line. The reading at 15' from the inverter came back at 37.5 decibels. J. Barczyk went out and performed a reading at the gate which came back at 40 decibels. He reviewed with J. Barczyk when the readings were taken and suggested a more humid day at 6 in the morning. He has provided J. Barczyk with a map of the areas where testing should be done. After he has completed the testing, he will provide the results to the Township. He stated the sound is carried more on a humid day. D. Frank sent him photos of his meter with readings of 51 or 52 on his porch. Since J. Barczyk is

the zoning officer and code enforcement official, his readings are the official readings. He is hopefully going out next week to obtain more readings.

D. Frank stated that 90% of the time you cannot hear any noise. His home refrigerator is 35 decibels and his home dishwasher is 54-55 decibels. After speaking with other sound takers, he is suggesting a time log to be set up for 7-10 days. He stated June 13 was a bad day. He had called the foreman for the solar company but he did not answer his phone. He ran down to the facility and no one was working. He stated the equipment he has is capable of taking a time log but he is not certified to do the testing. He stated he also provided to the Township engineer a copy of the NJ sound regulations. He is looking for guidance for the best way a resident can go forward constructively.

R. Dodds suggested possibly contacting the County Health Department.

T. Decker stated he will reach out to the County Health Department and see if they have the ability to do a time log. It might take a more formal complaint than just his request. He suggested that J. Barczyk still go out and do his sound testing. The County might require D. Frank to file a complaint. He stated Con-Ed is in the process of wrapping things up that is why they are not at the property. He believes they have installed the drainage.

P. Lubitz stated the Township has official readings and at no time were they over the local or state thresholds. The objective evidence does not allow the Township to do a lot more for the problem that D. Frank is finding on his property.

T. Decker stated there is nothing the Planning Board can do if the reading exceeds the local or state thresholds.

D. Pierce stated the noise ordinance is a general ordinance of the Township and enforcement is done through the zoning or construction official through the court. The Board has no power of the enforcement of the ordinances.

D. Frank inquired if a business exceeded the decibel limit would their CO be held up.

T. Decker responded even if the CO is going to be help up, it is not under the jurisdiction of the Board. Once an application gets approval from the Planning Board it is out of their hands.

R. Dodds stated the issue has brought up a concern the Board will have in future applications about the noise generated by these types of facilities.

P. Lubitz stated the effect of the noise would have to do with the ambient noise in the Township. As soon as a car goes down the road, the noise is no longer heard. 50 decibels in an issue in Kingwood but probably not in the rest of the State.

Delaware River Tubing (DRT)

L. Hardcastle, attorney, Y. Crance and R. Crance, managers of the DRT, were present this evening.

L. Hardcastle stated their presence this evening is twofold. One is to introduce the representatives of DRT. He does recognize some faces and looks forward to working with the rest of the Board. He is here to ascertain if the Board would or would not consider an application from DRT. There has been a violation issued from the zoning officer at the location. The violation indicates that a variance application is necessary. He is

questioning if it would be appropriate, in spite of the violation, to come before the Planning Board. He does believe that a Planning Board approval would be appropriate as opposed to a variance.

M. Syrnick inquired if they were operating temporarily and intended to go through the site plan approvals. The current situation came up very rapidly.

L. Hardcastle stated a number of circumstances came up. In moving from their prior location, which would have required an approval, to a commercial zone DRT thought it would have alleviated the need for an application. If further approvals are needed, DRT intends to work with the Board for every approval that is needed. The short answer is yes.

M. Syrnick stated she had spoken with E. Niemann and that there is nothing this Board can do and that it should be referred to the Township Committee.

D. Pierce stated he has not had the benefit of reviewing the zoning officer's violation. He inquired what type of variance did the zoning officer say was required in the violation.

L. Hardcastle stated the violation cited the ordinance which pertains to "no use except for uses expressly permitted" were allowed in the zone DRT was operating out of at this time.

D. Pierce stated DRT would have to file an appeal to the Board of Adjustment of the zoning officer's decision. The Board will then determine if the zoning officer was correct and if a use variance is required. If a use variance is required, DRT would have to appear before the Board of Adjustment. The applicant does have the opportunity to run two applications at the same time, one before the Planning Board for a site plan and one before the Board of Adjustment for a variance. The same information provided on a site plan would have to be brought before the Board of Adjustment to decide the appeal. An approval of a site plan from the Planning Board would be contingent on the granting of the variance before the Board of Adjustment.

L. Hardcastle stated he has not received any notification for a cease and desist for DRT. He stated a complaint has been filed with the municipal court with a court date in September. He inquired if it was still appropriate to bring an appeal to the Board of Adjustment.

D. Pierce stated the appeal and notice of violation are two different things. DRT has not appeared before this Board for any site plan and is operating without a site plan approval. The zoning officer's determination that a use variance is required is separate and apart from that notice of violation. He stated DRT would have to apply to the zoning officer for a zoning permit. He will either issue or deny the zoning permit. That is the decision that DRT would appeal to the Board of Adjustment.

M. Syrnick stated if DRT has the intent to do a site plan application, they should continue as planned to apply for a site plan. M. Syrnick stated E. Niemann suggested possibly the Township Committee could discuss the matter.

D. Pierce stated the only thing the Township Committee could do is amend the zoning ordinance. It might be subject to arguments of spot zoning.

L. Hardcastle stated the argument of if it is a permitted use is not before this Board. He should be requesting it from the zoning officer. No approval or denial has been issued.

D. Pierce stated it is a commercial operation. DRT should go to the zoning officer to get a zoning permit that the operation is a permitted use. That should be the first step in any operation.

M. Synchronic inquired if they were building any structures. L. Hardcastle responded they have a few tents which are under the size requirements for permits.

In response to a question by P. Lubitz regarding the shed located on the property, Y. Crance responded there is a 12x24 shed they placed on the property. P. Lubitz responded the shed is on the property without the proper permits. L. Hardcastle stated if the shed does not have the permits, it will be removed.

J. Mathieu inquired if there was a shower for the customers. Y. Crance responded they have a set up where the customers can rinse off their feet. He stated the water runs on the ground. J. Mathieu inquired if they have applied for a sign permit. Y. Crance stated it is his understanding that at the old location he heard that the Township, with the signage, that a permit is needed. However when they operated at the old roller rink location one thing that DRT did was chose to use the boat for signage. He stated he had heard that it was acceptable. J. Mathieu inquired if they installed gravel for the parking. Y. Crance responded right now it is a field and no gravel.

J. Mathieu inquired wouldn't they come to the Township after all they went through up at the roller rink. Why did you just go and set up with virtually no communication to the Township?

L. Hardcastle responded in the ten years they operated at the roller rink they received electrical permits and there was never an issue there. So certainly DRT can be forgiven for thinking that they could operate their business the way they have done it.

J. Mathieu stated his client saw no need whatsoever to contact the Township about signage, water running, impervious coverage on parking, zoning or nothing.

L. Hardcastle stated given the decade of experience that they had with the Township he does not think it was an unreasonable assumption. None of those issues were ever raised

D. Pierce stated he respectively disagrees with those statements. For you to stand here and argue that your client be forgiven for not following any procedures is a little disingenuous. We are confronted with the situation we have now and it is not to be anyone's benefit to argue about what happened in the past. Your client has a business it wants to run. It needs to do it in compliance with the Township requirements and ordinances. The best thing would be to focus on how to do that.

L. Hardcastle stated he does not disagree with the statements made by D. Pierce. It was the purpose of coming to this meeting.

T. Decker stated in clarification of the signage, the ordinance specifically states that signage cannot be on a trailer. Y. Crance stated he was not aware of that requirement.

L. Hardcastle stated he appreciated the Board's time this evening.

J. Snyder, Route 29, inquired how DRT could start a business without applying for approval.

D. Pierce responded the Board does not have any enforcement jurisdiction over that process. The business owner is required to go to the zoning officer and construction official and to come to this Board for site plan approval. If they don't do that, the only enforcement mechanism is, what he understands is currently happening, the zoning officer issues a violation. The matter is then heard by the judge in municipal court and the judge then may order the offending party to go before the appropriate board to obtain the appropriate

approval. It is something that cannot be prevented. All that can be done is to take the appropriate action to enforce the ordinances when it happens.

M. Syrnick stated it is up to the court to decide. The story that she heard is basically that they were moving from a parking lot to a parking lot and assumed they could do it.

NEW AND PENDING MATTERS

Resolution No. 2014 -01 - Wydner – Block 14, Lot 20- State Route 29

It was moved by P. Lubitz, seconded R. Dodds and carried to adopt **Resolution No. 2014 -01 - Wydner – Block 14, Lot 20- State Route 29**. All members present voted **AYE** on **ROLL CALL VOTE**, except S. McNicol, L. Riggio and M. Syrnick, who **ABSTAINED**.

Bunker Hill – Block 22, Lot 17 – Boundary Line Adjustment – Barbertown Point Breeze Rd – Hearing

M. Vincent, attorney for the applicants was present this evening. He stated the application before the Board this evening is a bookkeeping application. In 2006 a subdivision created 10 lots. To the south of Lot 17 there is an existing access easement. It was created to provide access to Lot 16 until Lot 16 could obtain access from another means. Lot 16 has now obtained access through a road on Hammer Road. Since it is no longer needed, the applicant is requesting the easement be extinguished.

T. Decker stated it would be appropriate to abandon the easement at this time. It will increase the buildable area on the lot with the detention basin. He inquired of M. Vincent of the intent of the existing gravel access lane.

M. Vincent responded the physical lane is on Lot 17.09. Part of the existing gravel lane is the access to Lot 17.09. It will not impact the wetlands buffer.

T. Decker stated the road for Hidden Orchard has been constructed and can be used for the remaining construction vehicles. There are houses being constructed. The base course and drainage have been completed. The application predated the current conservation ordinance. He reviewed his comments on the application:

1. As stated in the access easement deed, the 40' Wide Access Easement is to be extinguished upon creation of an access to Hammer Road from Lot 16. With the installation of the base course paving of the proposed cul-de-sac road accessing Hammer Road, it is appropriate to extinguish the 40' Wide Access Easement at this time.
2. Applicant should address the status of the existing gravel lane which crosses Lot 17 and adjacent Lot 17.09. As noted on the Final Major Subdivision Plat for Laurelton Belmont Estates, the gravel lane is also an easement serving for ingress and egress to Lot 16 as recorded in Deed Book 1253, Page 6. This lane is actively utilized by the builder of the Hidden Orchard Subdivision as a construction access.
3. Current property owner of Block 22, Lot 16 should be notified regarding the proposed extinguishing of the access easement.
4. Revised deeds along with any metes and bounds descriptions should be submitted for review.
5. Applicant is reminded that in accordance with the project's Stormwater Management Operation and Maintenance Manual, annual maintenance reports are required for the existing stormwater management basin on Lot 17 and other best management practices in the subdivision.

M. Vincent stated he has notified the owner of Lot 16 by certified mail of the extinguishing of the access easement.

T. Decker stated the Township does not have any maintenance report filed with them regarding review comment #5.

M. Syrnick called for comments from the public.

There was no response.

P. Lubitz stated there was an issue brought up to the Planning Board regarding the drainage on one of the lots in the development. The developer had indicated he would be taking some steps to remediate it. F. Severino, son of the developer, stated they are going to install a bigger pipe under the driveway. It should definitely be done by the end of July.

R. Dodds requested an electronic version of the plat be filed with the Township before the release of the deeds.

It was moved by J. Strasser, seconded by S. McNicol and carried to approve the request to extinguish the easement subject to the conditions. All members present voted **AYE** on **ROLL CALL VOTE**.

Schlachter/Woodside – Block 9, Lot 13.01 & 13.03 –Boundary Line Adjustment - Lower Oak Grove Road – Determination of Completeness

M. DeSapio, attorney for the applicant is present this evening. D. Hall, previous owner of Block 9, Lot 13.01, sold the property to the current owners in 2010. At the time of the sale of the property, the new owners did a new survey and the survey showed that a portion of the septic system encroached over the boundary line. Part of the agreement of sale was that the owners provided an easement for the septic system conditioned that a boundary line adjustment would be done. The lot line is being adjusted so the entire septic system will be on Lot 13.01. He realizes that the matter is listed on the agenda for a completeness but is requesting it be heard also this evening. Having the matter determined complete and heard on the same evening will save his client the additional expense of him returning next month.

D. Pierce stated there has not been a formal completeness review. The escrow account had been deficient.

T. Decker stated it is a very straightforward application. The submission is adequate for the Board of act on the request.

It was moved by S. McNicol, seconded by J. Strasser and carried to determine the application complete. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by T. Ciacciarelli, seconded by S. McNicol and carried to approve the application subject to the standard conditions. All members present voted **AYE** on **ROLL CALL VOTE**.

Public Hearing on Amending Open Space and Recreation Master Plan Element

It was moved by P. Lubitz, seconded L. Riggio and carried to open the public hearing on an **Amendment to the Open Space and Recreation Master Plan Element**. All members present voted **AYE**.

M. Syrnick called for comments from the public. No response was heard.

It was moved by T. Ciacciarelli, seconded by L. Riggio to close the public hearing on an **Amendment to the Open Space and Recreation Master Plan Element**. All members present voted **AYE**.

It was moved by P. Lubitz, seconded by L. Riggio and carried to adopt the **Amendment to the Open Space and Recreation Master Plan Element**. All members present voted **AYE** on **ROLL CALL VOTE**, except S. McNicol, who **ABSTAINED**.

S. McNicol inquired if the maps have been corrected. R. Dodds responded the area that is being addressed in the amendment is correctly identified on the revised maps. R. Dodds stated the Open Space Committee might want to discuss the labeling of the targeted parcels.

Discussion of setback requirements for Scenic Overlay Ordinance

R. Dodds provided some background on the setback requirements in the Scenic Corridor Overlay ordinance. He provided samples of the different setbacks along the area on the overhead.

T. Decker stated the ROW along Route 12 varies. It is not a consistent 60' from the centerline. When applications come before the DOT, they request additional property to be dedicated to the ROW if it is not 60'.

After a brief discussion, it was moved by J. Mathieu, seconded by T. Ciacciarelli to recommend to the Township Committee that the setbacks in the Scenic Corridor Overlay be 300' or 50%, whichever is less. All members present voted **AYE** on **ROLL CALL VOTE**.

Approval of Minutes

It was moved by R. Dodds, seconded by J. Mathieu and carried to approve the minutes of June 12, 2014 and place on file. All members present voted **AYE** on **ROLL CALL VOTE**, except S. McNicol and M. Syrnick, who **ABSTAINED**.

Temporary Chairperson

It was moved by R. Dodds, seconded by P. Lubitz and carried to appoint T. Ciacciarelli as temporary chairperson to sign the approving resolution for Block 14, Lot 20. All members present voted **AYE**.

APPLICATION STATUS

CORRESPONDENCE

PRIVILEGE OF THE FLOOR

ADJOURNMENT

It was moved by L. Riggio, seconded by J. Strasser and carried to adjourn the meeting at 9:20 PM. All members present voted **AYE**.

Respectfully submitted,

Diane Laudenschick, Secretary