

MINUTES

7:30 PM

PRESENT: R. Dodds
D. Haywood
S. McNicol
L. Riggio
L. Voronin
S. Harris, Alt #1
D. Pierce, Attorney

ABSENT: C. Ely
L. Frank
J. Mathieu
M. Syrnick
K. Kocsis, Alt #2

CALL TO ORDER

The meeting was called to order by L. Riggio 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. Your cooperation is appreciated. Due to continuing COVID19 precautions, the Planning Board meeting is a virtual meetings held online. The meeting is hosted on Zoom at the following URL address:
<https://zoom.us/j/96081450117?pwd=aDlVaEE0TE5YQVFfsZUx5SjVwNW00Zz09>.

Notification of the time, date and place of this meeting has been published in the Hunterdon County Democrat and Courier News on January 21, 2021, and has been posted in the Kingwood Township Municipal Building on January 21, 2021 and has been filed with the Municipal Clerk.

NEW AND PENDING MATTERS

L. Riggio stated the Board just received the following memo from D. Banisch in response to the three questions the Board asked last month:

1. *What Master Plan Elements require updating to maintain currency under the law?*
2. *How much would we estimate services to assist the Board with a Land Use Plan update/amendment?*
3. *What might a municipal stream corridor ordinance look like and how would such an ordinance operate?*

1. The Master Plan is required to be reexamined at least once every 10 years in accordance with N.J.S.A. 40:55D-89. Periodic examination, which provides that:

“The governing body shall, at least every 10 years, provide for a general reexamination of its master plan and development regulations by the planning board, which shall prepare and adopt by resolution a report on the findings of such reexamination, a copy of which report and resolution shall be sent to the Office of Planning Advocacy and the county planning board. A notice that the report and resolution have been prepared shall be sent to any military facility commander who has registered with the municipality pursuant to section 1 of P.L.2005, c.41 (C.40:55D-12.4) and to the municipal clerk of each

adjoining municipality, who may request a copy of the report and resolution on behalf of the military facility or municipality. A reexamination shall be completed at least once every 10 years from the previous reexamination.

The last Reexamination Report was completed and adopted by the Planning Board in March 2018. No update to any element of the Master Plan is required at this time.

Once a Reexamination Report is completed, the Planning Board (and the municipality) has satisfied the statutory obligation to maintain the Master Plan as a current and valid municipal master plan under the law. There are no other statutory requirements for periodic updates to individual elements of the Master Plan except for the Housing Plan Element and Fair Share Plan, which will require updates to maintain currency with affordable housing obligations on a 10-year cycle.

The Planning Board and the governing body may need to update the Housing Plan Element and Fair Share Plan update as soon as 2025, however, it remains to be seen how the timing of the fourth round of affordable housing obligations will be identified and assigned to municipalities.

Any element of the Master Plan may be amended or updated at any time the Planning Board chooses to make amendments to the Master Plan. However, no updates to the Master Plan are required now.

2. Land Use Plan Amendment:

N.J.S.A. 40:55D-28 of the Municipal Land Use Law was amended in November 2019 as it pertains to the Land Use Plan element of the Master Plan by requiring certain new analysis whenever the Land Use Plan is amended or a new Land Use Plan is adopted. Those changes are identified in italicized text below:

“N.J.S.A. 40:55D-28 (2) b. A land use plan element:

- (a) taking into account and stating its relationship to the statement provided for in paragraph (1) hereof [statement of goals and objectives], and other master plan elements provided for in paragraphs (3) through (14) hereof and natural conditions, including, but not necessarily limited to, topography, soil conditions, water supply, drainage, flood plain areas, marshes, and woodlands;
- (b) showing the existing and proposed location, extent and intensity of development of land to be used in the future for varying types of residential, commercial, industrial, agricultural, recreational, open space, educational and other public and private purposes or combination of purposes including any provisions for cluster development; and stating the relationship thereof to the existing and any proposed zone plan and zoning ordinance;
- (c) showing the existing and proposed location of any airports and the boundaries of any airport safety zones delineated pursuant to the “Air Safety and Zoning Act of 1983,” P.L.1983, c.260 (C.6:1-80 et al.);
- (d) including a statement of the standards of population density and development intensity recommended for the municipality;
- (e) showing the existing and proposed location of military facilities and incorporating strategies to minimize undue encroachment upon, and conflicts with, military facilities, including but not limited to: limiting heights of buildings and structures nearby flight paths or sight lines of aircraft; buffering residential areas from noise associated with a military facility; and allowing for the potential expansion of military facilities;

- (f) *including, for any land use element adopted after the effective date of P.L.2017, c.275, a statement of strategy concerning:*
- (i) *smart growth which, in part, shall consider potential locations for the installation of electric vehicle charging stations,*
 - (ii) *storm resiliency with respect to energy supply, flood-prone areas, and environmental infrastructure, and*
 - (iii) *environmental sustainability; and*
- (g) *showing the existing and proposed public electric vehicle charging infrastructure;”*

Depending on the extent to which the Planning Board wishes to consider amending the Land Use Plan, which would not seem to be indicated if the Board is relatively satisfied with existing land use policies and zoning, we would estimate that the cost of our services to assist the Board with a Land Use Plan review and update to be approximately \$4,500 - \$6,000.

If after a review of the Land Use Plan by the Planning Board it is determined that the update or amendment will be fairly limited, which will have to address the recently added statutory criteria added to the law in 2019 (see above), we estimate that the cost of our services would likely be on the low side of the cost estimate provided above.

3. Stream Corridor Ordinance:

A municipal stream corridor ordinance would be a local regulation that could add protection to stream corridors in addition to flood hazard regulations riparian zones.

According to NJDEP:

The width of the riparian zone is measured as follows:

- 300 feet along both sides of Category One waters (and all upstream tributaries within the same HUC-14 watershed);
- 150 feet along trout production waters and all upstream tributaries; trout maintenance waters (and tributaries within one mile upstream) and waters flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the regulated water for survival (and tributaries within one mile upstream); and 50 feet along all other waters.

A sample definition of a municipal “Stream Corridor” used in Far Hills, NJ prepared by our office reads, as follows:

Stream corridors shall mean the stream channel and all of the land on either side of the stream channel which is classified as wetlands, is within the 100 year floodplain, or is a sloping area of 12% or greater that is contiguous to the stream channel, wetlands or floodplain, and all of the land within a 100 foot wide buffer around all stream channels, wetlands, floodplains and contiguous slopes of 12% or greater. Stream channels shall mean permanent or intermittent watercourses shown on U.S.G.S. quadrangle maps, the County Soil Survey or such other source as the Borough may deem appropriate.

PLANNING BOARD MEETING
AUGUST 12, 2021

Thus, where the limits of a municipally defined stream corridor may exceed the 300' or 150' riparian zone established from the center line of stream under the NJDEP Flood Hazard Area regulations, land use activities may be further limited by the municipal regulations. For example, the local ordinance could limit permitted land use activity within the stream corridor to land uses such as cultivation and farming, pasture and controlled grazing, outdoor plant nursery, vineyards, and/or orchards, wildlife sanctuary, woodland preserve, and/or arboretum, game farms, fish hatcheries or hunting and fishing reserves, or additional landscaping of principal single-family structures existing as of a certain date (i.e. date of adoption of the municipal ordinance if there is one).

We trust that the Board will find this information useful in its consideration of this matter.

The Board discussed the memo and determined that Re-Examination Report was done in 2018 and is only required to be updated every 10 years so there is no legal obligation to do a review.

D. Pierce stated the only recommendation D. Banisch suggests in his memo is that the Planning Board and Governing Body may need to update the Housing Plan Element and Fair Share Plan as soon as 2025.

D. Pierce stated the review would be done in consultation with D. Banisch. The Board will rely on his experience and expertise to assist them. The Re-Examination Report contains a lot of statistical information that has to be gathered and presented. It doesn't have to be done in 2022 but the Board can start the process. They can tackle certain parts of the zoning ordinance to see if they need any changes but the Board doesn't have to do a full Re-Examination Report to make those changes.

R. Dodds stated many elements of the zoning ordinance can be changed. Most changes don't require more than a vote. The ordinance indicating the changes is introduced by the Township Committee then referred to the Planning Board for their recommendation and then back to the Township Committee for adoption. The Board can budget for the review next year or if something takes priority over the review, it could be pushed off to another year or two.

L. Voronin inquired if D. Banisch was provided the Environmental Commission (EC) memo from last month. The secretary responded that it was not personally forwarded to him as a single document but he received the agenda and the contents of the agenda were on the website.

L. Voronin stated he should be notified that the EC had comments and ask him for his comments on their memo. In his comment on #1, he states that the 2018 Re-Examination report dealt mostly with meeting the COAH requirements. It is really important that the concerns the EC listed in their memo be incorporated into the Master Plan.

D. Pierce stated the question for D. Banisch was about a stream corridor ordinance mentioned in the prior reports. D. Banisch inquired what does the Planning Board want to do. The DEP has stream corridor protections in place and the Township cannot have any less stringent requirements. The Township can extend the areas that are protected along the stream. The Township could limit the activities along the expanded corridors to what the municipality deems appropriate. The Board needs to discuss whether it would be appropriate to regulate stream corridors more stringent than the DEP. What would be the basis for the additional protection?

R. Dodds stated traditionally with these kinds of regulations from the State, the Township requires the applicants to comply with DEP regulations. The DEP requirements are referenced in the ordinance. By

referencing them in the ordinance, the Township does not have to change their ordinances if the DEP changes their regulations.

S. McNicol suggested that the EC is a member of ANJEC. ANJEC has recommended stream corridor ordinances and the Township has decided not to do that in the past. She will ask ANJEC to send them their latest suggestions. They provide model ordinances to municipalities. She will request them to send them a copy of the latest paper that discussed ordinances and see if there are any reasons why the Township should, from their prospective or expertise, make any changes. She will provide it to the Board members for next month's meeting.

BP Zone

R. Dodds stated the BP zone is one of the more recently updated zones. The County has an economic component and individuals come into Kingwood looking to start certain types of businesses. Because a use is not specifically stated the individual would have to go to the Board of Adjustment (BOA) for approval. One business that is not permitted is a micro-brewery, unless they are classed under manufacturing and assembly but it would not be permitted to serve onsite. There is currently a company growing rapidly in Kingwood which is located in the Business Park itself. The company imports grain from all over the world and sells it over New Jersey and the east coast. It is on the edge of fitting in under manufacturing. A distillery for liquor is not a permitted use. There is a big push for small distilleries to have a drinking component. If you wanted a drone zone or a different more modern use, those would not be permitted in the BP zone. Lumberyards are permitted in the zone. He commented where would the mentioned businesses fit into Kingwood. Warehousing will be a huge issue. Warehousing is permitted in the BP Zone but not in other ones.

D. Pierce stated if an application comes in for a use not permitted in the zone, the applicant would have to go to the BOA for a use variance. If the Township rezones an area based on one application, it could be considered spot zoning and be invalid.

R. Dodds stated by being specific, the Township locks itself into a use. How many lumberyards can you have in one township? The BP Zone allows for commercial greenhouses but those are not allowed in other zones. You could have daycare centers but they are accessory uses to a principal permitted use.

D. Pierce stated a parking garage would be a principal use but a parking garage for an office building that is an accessory use. Daycare facilities were included for office developments because a lot of offices were putting in daycares so mothers could come to work and drop off the kids. Daycares were in connection with an office facility.

R. Dodds inquired about the difference between permitted uses and conditional accessory uses.

D. Pierce responded the permitted uses such as lumberyards and warehouses and the accessory uses are incidental to the principal uses. If you had a warehouse, an office could be located in the warehouse. There would be certain storage facilities in a lumberyard. The accessory uses would be associated with that type of use. The easiest explanation would be a residential use. A detached garage is an accessory use. Conditional uses are permitted but must satisfy all of the conditions. Conditional uses were used to regulate solar applications. Solar applications were permitted by law so they were deemed inherently beneficial. A solar application would have to comply with conditions A-Z. One condition was that the panels could not cadmium telluride. If an application does not meet any one of the conditions in the conditional use list, it would have to apply to the BOA.

R. Dodds stated when a use on a property is permitted a purchaser knows what can be done on the property. A purchaser looks for certainty. The BOA is the most uncertain. If someone wants to buy the bowling alley and turn it into a distillery tasting facility, it would not be permitted in the HC zone.

D. Pierce suggested that there is no one complaining about the uses in the BP zone but they are a little too narrow. The Township is finding that purchasers are looking for commercial uses and not industrial type of uses. The Board can have the ordinance allow as principal permitted commercial uses with a broad definition. He read a definition of commercial uses. It would take care of the distillery issue by permitting eating and drinking. The Board can add in other uses, such as micro-breweries, and having a specific definition and permitted size. In manufacturing and brewing uses it could be any size but consumption and seating would be limited. It could be limited to liquors, beer and wine.

R. Dodds stated it is a great solution and adds flexibility.

L. Voronin noticed that banquet facilities are permitted in the BP Zone. She inquired why only banquets and not a restaurant.

D. Pierce responded because Razberry's was in existence at the time. Restaurants are permitted in the Village and Highway Commercial zones.

In regard to the milling manufacturing, R. Dodds stated they had a desire to buy one of the farms in the AR-2 zone. If they were to grow their own materials and process them on the farm, it would be permitted but one truckload of grain from a foreign country would make the use non-permitted use. He is a person that looks to disburse the Township's tax base for people who want to do business in the Township and which are appropriate for the area.

L. Riggio requested D. Pierce provide a draft ordinance for the Board to review.

S. McNicol commented on the sewage storage facility. It has changed hands and Russell Reid purchased them. They applied to the Planning Board. It is not manufacturing. Shouldn't they have gone to the BOA?

R. Dodds stated the property is located in a different zone.

D. Pierce stated they did apply to the BOA.

R. Dodds stated he requested the zoning officer to go to the property on Tuesday. There seems to be a collection of rusty metal more than he has every seen. The zoning officer reminded the owners of what they are permitted to do on the property.

S. McNicol questioned about the property that had the cranes and whatever. She stated that is what continues to happen and is concerned about opening up too much.

L. Voronin commented she is concerned about some of the wording under 132-35(A) Purpose:

Purpose. This zoning district..... Such uses should not be high water users, should maintain groundwater quality and should avoid encroachments into stream corridors and wetlands.....

She would like to have the word “should” be removed and “must” inserted instead.

D. Pierce stated it would be subject to the Township’s well ordinance.

R. Dodds stated that section is a preamble to the actual regulations. It is a general description. He stated the word “should” should be changed to “must”.

The Board members were in agreement.

L. Voronin inquired who wrote up the Eastern Gateway Village Center Overlay (EGVCO). R. Dodds responded it in there for informational purposes.

Hybrid meetings

R. Dodds stated he met with a representative from BIS/Gramco last Friday. He inquired about the requirements for the Township to do a hybrid meeting. He informed them he was not interested in a low end version but a seamless one button system. The Township would have to replace the control computer and the projector, which is about 6 or 7 years old. This will enable members to attend virtually. The Township has funding from the Federal Government. He stated it should be ready to be reviewed at the next Township Committee meeting so it should be available to the Boards by October.

L. Voronin thanked R. Dodds for checking into hybrid meetings. She is hesitant to attend a meeting in person now or in the next few months.

S. McNicol stated it would enable people with limitations who would want to attend to be able to attend.

Approval Minutes

It was moved by S. McNicol, seconded by R. Dodds and carried to approve the minutes of July 8, 2021 and place on file. All members present voted **AYE** on **ROLL CALL VOTE**.

CORRESPONDENCE

NJ Planner

L. Riggio announced it was available on the website.

PRIVILEGE OF THE FLOOR

L. Voronin stated that she relies on an email reminder that there is a Planning Board meeting with the information posted on the website. She didn’t get an email until yesterday. She is requesting the Board have a new policy that at least a week before the meeting, an email is sent reminding them that there is a Planning Board meeting in a week. She would like an email.

D. Laudenbach stated the information that was listed on the agenda, except for D. Banisch’s report, was posted on the website right after the July meeting.

D. Haywood stated she pulled up the information and found that other things had been added. She now knows that she has to go out and look. As far as a reminder, she doesn't need one.

L. Riggio stated he has scheduled the second Thursday of every month for the meeting night. He has never had a problem. If a reminder is needed, we can ask for it to be done.

L. Riggio requested a reminder be sent out a week before the meeting but he added that he checked the website about an hour before the meeting. An item was just added.

L. Voronin stated L. Riggio summed it up very nicely. The Board members should get a warning message a week ahead of time and the secretary won't have to do last minute manipulations.

PRIVILEGE OF THE FLOOR

S. McNicol stated the EC put together a committee for the well ordinance. They were unable to present it last month at the Board of Health (BOH) meeting. She wanted to invite the Planning Board. The meeting is next week on the 18th. It has been changed to an in-person meeting from being a virtual one. She is wondering why when they submitted their report last month, they were told it was too large and too much for them to read in 10 days but she doesn't see anything posted and its less than one week out from the meeting. She was wondering what the status was because the information was important. She would like to request that the Planning Board attend the meeting so that they can understand the changes to the well ordinance. She was wondering what was happening.

D. Laudenbach responded that Ms. McNicol and the EC were requested to contact Deputy Mayor Ciacciarelli if they had any questions regarding the scheduling of the BOH meetings.

L. Riggio stated the report was a thorough report but when he usually sees a report, he would like to see both aspects. He stated he is speaking as a private resident. When you are trying to evaluate information there are two sides to the conversation. Is the Township impacting someone every time by requiring them to do the test? What is the financial impact to the people? He didn't see that in the report.

S. McNicol stated she doesn't have an answer.

L. Riggio stated he is not speaking for the Planning but for himself. He is trying to understand both sides and how it will impact other people.

R. Dodds stated that is why it should be openly discussed at the BOH. There are two sides. It may have a cost to the individual who is putting in the well but there may be a significant cost to the surrounding well owners. There needs to be a balance somewhere. His feeling is that if it is an existing lot that has had all the testing done to become an existing lot nothing needs to be done but if it is an existing lot with no testing that is a different issue. He is not sure if the well ordinance reflects that it should. All lots are handled the same way. When an applicant does a subdivision the requirements center more around the septic testing than it does water. In the old style, there were creeping minors every year. Someone would do a new lot each year. The previous requirements were necessary. The Township does not know the impact those lots would have on water availability.

D. Pierce stated for many years there was no testing requirements for a subdivision.

L. Riggio stated it is simply common sense that testing should be done.

R. Dodds stated he is puzzled by those individuals who build their houses first and then drill their wells.

L. Voronin stated there is no testing requirements for a single lot up to 3 lots to determine availability of ground water. It is well documented that the aquifer underlying Kingwood is one of the poorest sources of water in New Jersey. That was the primary reason the well ordinance was developed to deal with that issue so that there is sufficient water for that house and the surrounding people.

L. Riggio stated there is an associated cost for the test and it should be in the report. The report should be a balanced report. His comments are based on being a citizen of Kingwood.

S. McNicol stated she wanted to make the Board aware of the meeting so that it does not have to be rehashed again. Her thought was that if the members of the Planning Board would attend the BOH meeting they would get a better understanding of the well ordinance.

R. Dodds stated the BOH meeting is August 18th at 7:30 pm.

L. Voronin stated D. Kratzer, Chairperson of the EC, is preparing a presentation. It is very informative. As many members of the Planning Board that could attend should.

D. Haywood stated a way to compute the cost might be a formula. She was involved with the well ordinance as well as the information provided by T. Hauck. It made her realize that the Township is in a very poor position as far as water is concerned. The Township has to protect the people to protect their wells. The more buildings that are built the less that is available for everyone else. Water is not increasing. The Township should take the precaution and not be able to just go with what the engineer thinks is reasonable because we don't want to have undue cost for anyone in the Township. The secondary thing is to protect the current residents.

L. Riggio stated it should be public record of what people were spending. It should be part of the analysis. The costs should not be ignored all together and say it doesn't matter. It should be part of the conversation.

D. Pierce stated it is an important discussion but it is really not this Board's jurisdiction. It is under the jurisdiction of the BOH. The Planning Board can discuss the subject until 2025 but it is the BOH that will need to be convinced and take action.

S. McNicol stated she agrees with the comment but in today's world, you don't know what your septic system is going to cost you. It could run between \$20,000 to \$50,000. Water testing is much less. She stated you don't know all of the costs going in when you build a house.

ADJOURNMENT

It was moved by R. Dodds, seconded by S. McNicol and carried to adjourn the meeting at 8:44 PM. All members present voted **AYE**.

Respectfully submitted,

PLANNING BOARD MEETING
AUGUST 12, 2021

Diane Laudенbach, Secretary