

MINUTES

PRESENT: J. Abel
M. Augustine
R. DeCroce
D. Haywood
J. Lutz
J. Mathieu
T. Siano
J. Strasser
S. Zdepski
J. Harabedian, Alt. #1
L. Herrighty, Alt. #2
R. Lorentz, Engineer
D. Pierce, Attorney

ABSENT:

CALL TO ORDER

The meeting was called to order at 8:00 PM by J. Lutz.

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 Delaware Valley News and Express Times and sent to the Hunterdon County Democrat, 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

Approval of Minutes

It was moved by M. Augustine, seconded by D. Haywood and carried to approve the minutes of April 11, 2006 and place on file. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by M. Augustine, seconded by D. Haywood and carried to approve the minutes of April 11, 2006 Executive Session. All members present voted **AYE** on **ROLL CALL VOTE**.

Resolutions

It was moved by D. Haywood, seconded by T. Siano and carried to adopt **Resolution No. 2006-16 – Van Holten – Block 28, Lot 11 – Major Subdivision**. All members present voted **AYE** on **ROLL CALL VOTE**.

Hidden Orchards – Block 22, Lot 16 – Request to Postpone Formal Hearing

The applicant is requesting to be listed on the June 13, 2006 meeting agenda. There is no action by the Board necessary.

Tozzi – Block 33, Lot 1 – Determination of Completeness

J. Lutz called the matter. There was no response.

D. Pierce stated the Board needs to perform a review and make a completeness determination. The Board has 45 days from the submission of the material to determine the application complete or incomplete. If the Board takes no action within the 45 days, the application is automatically deemed complete.

R. Lorentz stated there are a number of problems, mostly created by the adoption of the new zoning ordinance. This application has been pending since 2003. There was a gap from April 2003 until June of 2005, when the plans were revised. The plans were resubmitted in late 2005. The application is missing certain details which were originally missing when submitted in 2003. R. Lorentz stated this submission is in response to a December 2005 memo. The revised application was received on April 18, 2006, more than a month after the deadline date of the new ordinance. The application needs to address the provisions of the new ordinance. The application does not indicate the constrained area calculations or the buildable area. They have adjusted the lot sizes to a gross of 7 acres but they do not determine a buildable area within those lots. There is a lot circle but no enumeration of the location of the wetlands nor their size. He stated there are more wetlands on the property than have been identified. There was an indication in 2005 that DEP approval had been applied for but there has been no action. He stated he recommends to the Board to declare it administratively incomplete because of the lack of certain items that are needed to determine if it complies with the new zoning requirements. The property has a pond on site, which is a constrained area. There needs to be a deduction for the pond out of the overall tract. There is no indication how large the pond is and there appears to be wetlands associated with the pond. The applicants intend to modify the nature of the pond so it serves as a detention basin.

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

Tumble Partnership - Block 32, Lot 10 – Settlement of Litigation – Public Hearing

D. Pierce stated this is a public hearing to review the proposed settlement of the litigation brought by Tumble Partnership as to its application and the new zoning ordinance. Any time litigation is settled involving a public body, a public hearing must be held to provide the public with knowledge of the settlement and to offer comments. The applicant alleged the Board and the Township acted arbitrarily and capriciously in connection with the review of the application on a completeness issue and the adoption of the new zoning ordinance. The applicant and litigant contended there was a completeness determination in February of 2006, which identified two relatively minor items that needed to be

corrected before the board felt the application complete. At the meeting in March, the applicant had submitted revised materials and the Board deemed the application incomplete based on perceived deficiencies in the maps. Case law is clear that unless an item is specified as a checklist item, the Board cannot deem an application incomplete because the application does not contain that item. The requirement of the map and street names being legible was not a checklist item. The judge, who has charge of this case, is a former land use attorney, who is well known and has represented Boards and developers, has suggested it would be appropriate to settle because there are issues involved. The Planning Board has reviewed the concept of a settlement of this matter, has taken into consideration, with the cost of litigation defending it, the likelihood of success or failure of the litigation, a 50/50 chance, and has determined their desirability to settle the litigation. The Board was polled and there was a unanimous feeling to defend the litigation would outweigh the benefits if the Township were successful. Under the new zoning change, the Township would avoid three lots of the development. On a cost benefit analysis, the Board does not feel it is worth to fight the battle. There are risks to pursue the litigation to the end and challenge the validity of the new ordinance. There are no sure results and if it is thrown out, then other applications the Board has acted on in the interim could be adversely affected and open to challenge. The proposed settlement agreement provides that the Board agree the application would have been deemed complete, as of February 14, 2006, and shall be reviewed under the ordinance in place at that time. The hearing on the application will be scheduled after they submit additional information to the Board. The Board would act within 90 days after the settlement is approved pursuant to this hearing. The applicant has agreed to grant the Planning Board extensions of time to complete the review of their application. The old zoning ordinance would apply to this application and the lands contained in this application. Any other lands owned by the applicant would be liable to the new zoning. With this settlement, the applicant will dismiss the case and any and all claims related to the litigation.

J. Lutz opened the hearing to the public.

W. Pandy inquired which checklist item was missing from the application. D. Pierce responded it was the checklist item requiring the plat to contain a north arrow. All, but one of the maps, in the package contained the arrow.

J. MacConnell inquired if the applicant was going to be required to drill the wells prior to building the dwellings. D. Pierce stated he was not certain the ordinance required the wells to be drilled prior to the building of a dwelling. If so, the application would be subject to it. The application is less than eight lots.

D. Kratzer – Hill Road – is there a requirement to notify the adjacent landowners. D. Pierce responded there has been no requirement for an advertisement specific to the property. Once the application is deemed complete and ready to proceed to the public hearing, the applicant would be required to publish notice and provide notification to the surrounding property owners.

L. Schmid is it possible that the zoning in question could be challenged in a suit. D. Pierce stated the ordinance was developed to be in the best interest of the Township. It is the consensus of the Board that this is not the litigation to defend zoning on because we are defending other litigation about the zoning ordinance which has a potentially greater impact.

S. Zdepski stated on the current matter, the determination of incompleteness was based on a couple of technicalities.

W. Pandy inquired about the cost of defending litigation. D. Pierce stated the costs vary, depending on the case and the parties involved. D. Pierce stated the costs could be higher than \$60,000.00.

B. Schmid stated D. Pierce had indicated additional litigation was pending. There might be problems with other applicants who have come after the adoption of the ordinance who have been told to comply with the new ordinance. D. Pierce stated, in regard to the other applications, the Board has acted and granted approval based on the new zoning ordinance, if the new ordinance is invalidated, the projects approved in the interim could return and request changes to their development.

J. Lutz closed the hearing.

It was moved by J. Abel, seconded by J. Mathieu and carried to approve the settlement. All members present voted **AYE** on **ROLL CALL VOTE**.

Executive Session – Resolution No. 2006 – 17

RESOLUTION NO. 2006 - 17

WHEREAS, Section 7 of the Open Public Meetings Act, Chapter 231 P.L. 1975 (R.S. 10:4-13) permits the exclusion of the public from a meeting or a portion of a meeting of this public body in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist;

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Kingwood, County of Hunterdon and State of New Jersey as follows:

1. The public shall be excluded from the meeting or a portion of a meeting at which this public body discusses the hereinafter specified subject matter.
2. The general nature of the subject matter to be discussed is as follows:

Litigation

3. The time when the circumstances under which the discussions conducted in closed session of this public body can be disclosed to the public is as follows:

The minutes of the closed session will be made public upon conclusion, dismissal or settlement of litigation; or final resolution of agreements or personnel matters; and in any event, when appropriate pursuant to N.J.S.A. 10:4-7 and -13.

4. This resolution shall take effect immediately.
5. The Planning Board may take additional action upon returning to regular session.

It was moved by J. Mathieu, seconded by D. Haywood and carried to adopt the foregoing resolution. All members present voted **AYE** on **ROLL CALL VOTE**.

J. Lutz called the regular meeting back to order at 9:18 PM.

CORRESPONDENCE

J. Lutz reviewed as per the agenda.

Kingwood Historical Society – Re: Laurelton Belmont – Block 22, Lot 17 – Road Name

R. DeCroce stated he was in favor of naming the road Cornelia Road, in memory of the many years C. Baum served on the Board.

It was moved by J. Abel, seconded by J. Strasser to inform the Historical Society that the Planning Board would be in favor of them naming the road in the Hidden Orchard development “Cornelia Road”. All member present voted **AYE**.

PRIVILEGE OF THE FLOOR

J. MacConnell inquired as to the subject matter of the executive session. D. Pierce responded the litigation with Frenchtown Run/Deer Run and the Horseshoe Bend application.

ADJOURNMENT

It was moved by J. Abel, seconded by T. Siano and carried to adjourn the meeting at 9:28 PM. All members present voted **AYE**.

Respectfully submitted,

Diane Laudenschick, Secretary