

MINUTES

PRESENT: R. Dodds
D. Haywood
J. Mathieu
L. Sensus
J. Strasser
D. Posey, Alt #2
A. Clerico, Planner
D. Pierce, Attorney

ABSENT: J. Burke
T. Kratzer
S. McNicol
E. Niemann
M. Syrnick, Alt #1

CALL TO ORDER

The meeting was called to order by R. Dodds 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

Hewitt – Block 40, Lot 25 – Request for Extension to File

S. and R. Philips were present this evening for the application. They are requesting an extension of time to re-record the deeds.

It was moved by D. Haywood, seconded by J. Mathieu and carried to grant a 90-day extension of time to file the deeds. All members present voted **AYE** on **ROLL CALL VOTE**.

Phillips – Block 41, Lot 13 – Request for Extension to File

S. and R. Phillips were present this evening for the application. They are requesting an extension of time to re-record the deeds.

It was moved by J. Mathieu, seconded by J. Strasser and carried to grant a 90-day extension of time to file the deeds. All members present voted **AYE** on **ROLL CALL VOTE**.

Galleria – Block 39, Lot 7 – Request for Extension to File

B. Casuscelli and P. Casuscelli were present for the application this evening. The delay which caused the need for an extension of time was due to the fact the Township did not have the wetlands marker details available for the applicants to utilize.

It was moved by J. Mathieu, seconded by D. Haywood and carried to grant a 90-day extension of time to file the deeds. All members presented voted **AYE** on **ROLL CALL VOTE**.

Stepanovsky – Block 7, Lots 3 & 3.07 Oak Summit Road – Boundary Line Adjustment – Hearing

M. DeSapio, attorney, and M. Stepanovsky, applicant, were present for the application this evening. M. DeSapio stated the application is for a lot line adjustment between Block 7, Lots 3 and 3.07. The applicant is part owner of Lot 3 with his brother. The current parcel contains 110 acres. The applicant is proposing to merge with Lot 3.07 approximately 48 acres from Lot 3. There is no proposed development. It is a matter of splitting the family farm in half between the two brothers. The access easement over Lot 3 for Lot 3.07 will continue after the lot line adjustment. The flag stem for Lot 3.07 will not be utilized.

D. Pierce stated the boundary line adjustment fully complies with the zoning ordinance. The application is for a boundary line adjustment and does not require a public hearing.

It was moved by D. Haywood, seconded by L. Senus and carried to grant the application for a boundary line adjustment with the following conditions:

1. Review and approval of the Deeds by the Board's professionals.
2. Recordation of the Deeds within 190 days of the date of this resolution.
3. Receipt of unconditional approval from the Hunterdon County Planning Board.
4. Receipt of unconditional approval from the Hunterdon County Soil Conservation District.
5. Receipt of unconditional approval from the D&R Canal Commission.
6. Neither the Board nor its employees or professionals will perform any service in furtherance of this approval if there is a deficiency in any escrow or inspection fee account. The applicant shall be under a continuing duty to maintain a positive balance in all accounts until all conditions have been satisfied and all charges have been paid. Approved Plats or Deeds shall not be released for recordation unless all outstanding escrow fees have been paid and the applicant's escrow account contains sufficient funds to cover anticipated unbilled expenses.
7. The within approval and the use of all property subject to the within approval are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all Municipal, County, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency(ies) between the terms and/or condition of the within approval and any approval(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon proper application.
8. The Township of Kingwood Planning Board reserves the right to revoke and withdraw any approval hereby granted in the event that there is any deviation from or alterations of the plan hereby approved, unless prior written approval for any such deviation or alteration has been

- obtained from the Planning Board. Minor deviations and field changes may be authorized in writing by the Township Engineer.
9. All improvements shall conform to building standards and other regulations as set forth in Federal, State, County and Municipal Statutes, Regulations, Codes and Ordinances, at the time of installation of the said improvement.
 10. The acceptance by the applicant of this approval and reliance thereon by the applicant for the purpose of commencement of construction of improvements within the project in accordance with the approval, shall operate as an acknowledgment and agreement by the applicant, its successors and assigns, that it accepts the official action herewith memorialized as being subject to the terms and conditions as contained herein, and agrees to fully comply and be bound thereby.

All members presented voted **AYE** on **ROLL CALL VOTE**.

BDAC – Block 23, Lot 17.02 – Barbertown Point Breeze Road – Request for Hearing

D. Pierce stated he has reviewed the proof of publication and notice. The applicant has satisfied the notice requirements and the Board can conduct the hearing.

A. Belle provided the following memo to the Board:

With regard to the previous subdivision approval granted on Sept. 9th, 2008, as outlined in resolution 2008-16 with a 130-day extension granted April 14th, 2009, as outlined in resolution 2009-06; the applicant, BDAC, LLC during its evaluation process has discovered inconsistencies which need to be clarified. As such, the applicant will be re-appearing before the board at the July 14th meeting to discuss amending the previous approval conditions with regards to:

Resolution No. 2008-16

- 1) Page 6 – the first ‘*WHEREAS*’ paragraph which contains the phrase, “...**2000 square feet**”, should be replaced with “**3000 square feet**”.
- 2) Page 8 – item 13 reads that the conservation and hedgerow preservation easements shall be delineated in the field “...*prior to the issuance of any building permit...*” by the installation of two markers. The wording here of “any” is not consistent with item 14 using “a”, and with what was discussed at the hearing, as certain lots not being immediately developed will continue to be actively farmed. Installing markers on those lots would damage farm machinery and hay cutting equipment. This phrase should instead read “...*prior to the issuance of a building permit for that lot...*”
- 3) Page 8 – item 14 reads, “*Prior to the issuance of a building permit, the applicant shall submit a baseline documentation report for all conservation and hedgerow easements documenting with photographs the installation of the boundary markers and the condition of the easement areas.*” This wording states it must be performed before receiving the building permit; and would therefore not allow for any disturbance, clearing or removal of trees and brush that may be necessary within this area during the construction process to allow for adequate utility access, with associated clearances, to the lots. It should either be amended to permit the above during construction, or change the timing to have this performed prior to issuance of a CO.
- 4) Page 9 – item 16 does not accurately represent all the conditions and/or exceptions that were in affect

within Kingwood Township Ordinance Section 153-25 'Applicability' during the June 10th, 2008 hearing. This item should be amended to instead read that the applicant will perform any necessary well tests that may be required by Kingwood Township Ordinance Section 153-25.

5) Page 9 – item 17 contains the phrase that no building permit shall be issued, “...*for any lot unless and until a well permit...*” has been obtained as required by section 153-24. According to the wording in that section, this phrase should be replaced with “...*for a lot unless and until a Certification of Well...*”

6) Page 9 – item 18 references water quality testing being conducted before CO as required by section 153-25; however, this 'Applicability' section does not cover this topic. Should this instead reference meeting the Certification of Well requirements of section 153-24 before the issuance of a building permit?

7) Page 10 – item 24 does not accurately represent all the conditions and/or exceptions that were in affect within Kingwood Township Ordinance Section 153-25 'Applicability' during the June 10th, 2008 hearing. Therefore, incorrect escrow/fees have been referenced. This item should be amended to instead read that the applicant will pay the necessary fees and/or escrows when due according to section 153-35 when applicable according to section 153-25.

8) Page 10 – item 25 does not accurately represent all the conditions and/or exceptions that were in affect within Kingwood Township Ordinance Section 153-25 'Applicability' during the June 10th, 2008 hearing. Therefore, incorrect escrow/fees have been referenced. This item should be amended to instead read that the applicant will pay the necessary fees and/or escrows when due according to section 153-35 when applicable according to section 153-25.

Resolution No. 2009-06

- Due to the above referenced items and delays in obtaining all third party approvals needed in order to perfect deeds, the applicant requests an extension of another 130-days.

A. Belle was sworn in by D. Pierce.

A. Belle stated he was speaking on behalf of the corporation.

A. Belle reviewed the above memo.

In response to A. Belle's comments and memo, D. Pierce responded the request in Point 1 is appropriate. Point 2 the difference between the use of "a" and "any" in Nos. 13 & 14 is semantics. It is the same meaning and there is consistency between the two. The overall issue is whether the conservation and hedgerow easements are required before any building permit is issued for that particular lot. There was quite a bit of discussion on the number and placement of the easement markers for this application. A. Belle raised the issue the lots are farmed lots. Prior to this application, the Planning Board had required easements markers at every deflection point in the easement line. The Planning Board, in this case, limited the number of easement markers to two for each property, at the boundaries of the hedgerow. The number and location of the easement markers was limited so that they would not interfere with the agricultural uses on the property. To him, #14 was the overall of the conservation and hedgerow easements. There was no disturbance allowed in these areas except for those activities and disturbances as may be permitted by DEP or any other agency with authority. If the installation of utilities would require a wetlands permit, the applicant would be required to obtain a permit. It was his understanding that the Planning Board's position was to not allow any disturbance in those areas. Utilities

should be placed in other than those restricted areas. In regard to #4, he is not aware of what A. Belle has received from the Board of Health.

J. Mathieu indicated the Board of Health minutes state J. Kopen is reviewing the Well Ordinance and the consistency throughout it. The Board of Health has turned the review over to their attorney. He stated, in his opinion, it is not appropriate for the Planning Board to pick apart the Well Ordinance. He suggested to A. Belle Items 4, 5, 6, 7 & 8 of his memo are Board of Health issues.

D. Pierce gave the Planning Board his recollection of what happened with A. Belle's application. At the time the application was filed, the Well Ordinance on a 2-lot subdivision did not require aquifer testing. While this application was pending and before it was heard by the Planning Board, the Well Ordinance was changed to require the aquifer test for a 2-lot subdivision. It was not a checklist item, but as a condition of approval of a subdivision. The Planning Board decided it was not fair to the applicant to make him do the aquifer testing before a determination of approval. They decided to make it a condition of approval that the aquifer test be done prior to the issuance of a building permit, which is indicated in the language of the approving resolution. D. Pierce stated No. 17 should be changed to "that ~~any~~ a lot unless and until a well permit Certification of Well has been obtained as required by Kingwood Township Ordinance Section 153-24".

A. Belle in regard to #3 of his memo and the conservation easements on the hedgerows, the DEP regulations pertain to the 300' stream corridor easement and according to the approval any activities permitted by the DEP may take place on the conservation easement. The preservation easements on the hedgerows do not fall under the DEP regulations. If he delineates the hedgerow easement prior to the installation of the utilities, they could be found in violation of the easement. The trees are only a few feet from the access road. The utility might require 10' to 20' for the utilities along the driveway. A. Belle suggested the delineation take place prior to the issuance of the Certificate of Occupancy.

D. Pierce suggested the best way to address the issue is to revise the boundaries to move them sufficiently to provide access for the utilities. The conservation easement is a recorded document that should be recorded when the deeds are recorded. The properties could be sold and the new owner is not aware of the easement.

It was suggested A. Belle have JCP&L come out and review the site and determine their needs. He should then return to the Planning Board with the correct delineation of the hedgerow easements.

D. Pierce stated conditions No. 13 and 14 of the resolution require the markers and documentation prior to the issuance of the building permit for any structure. It would allow the installation of the utilities but no permit for any structure is permitted until the easements and markers are recorded and installed.

R. Dodds stated the Planning Board will be addressing Nos. 1, 2 & 3 and Nos. 4, 5, 6, 7 & 8 will await for a determination from the Board of Health.

A. Belle stated if he strictly interprets the Well Ordinance, he should be allowed to obtain a well permit for Lot 17.05 and complete the three part pump test. In the Applicability and Timing for Types of Water Use, the section for subdivisions of two or more lots has a subscript #3. Subscript #3 states "unless the total proposed daily demand is 800 gpd, whereby the three-part pump test shall be applied to each well". He interprets it that he should be able to build on the front lot and not be required to do the aquifer test until those two lots are over 800 gpd.

D. Pierce stated the revision relating to the 800 gpd was revised after this subdivision was approved. The whole point of the Planning Board's condition was because the ordinance required the aquifer test for a subdivision of two lots or more prior to granting the approval of the subdivision. The Board waived that requirement and made it a condition of approval to require the applicant conduct the aquifer test.

A. Belle stated is strictly says a 3 part pump test. He requested D. Pierce review the applicability table.

R. Dodds stated the Well Ordinance is being reviewed by the Township and Board of Health Attorney. Those items are on hold until their review is complete.

D. Pierce stated the correction to #5 changing "for any lot unless and until a well permit" to "for a lot unless and until a Certification of Well", on #6, it was a typo and the reference should be Section 153-29, nos. 7 & 8 are related and were the requirements of the Well Ordinance when the application was approved. Section 153-35 (d) & (e), which was adopted on April 15, 2008, two months before the application was heard, specifies what escrows are required. He placed them in the resolution so there was no confusion to what those fees were going to be to comply with the Well Ordinance.

A. Belle stated those fees in the resolution are inaccurate. He has a well permit, which was issued. He did not have to pay for all three.

D. Pierce stated he has a problem with V. Uhl making legal interpretations. The Well Ordinance expressly provides you may get a well permit. V. Uhl's comments relate to the well permit. The conditions of subdivision approval and the ability to record the deeds to perfect the subdivision are a condition of approval. The approval provides the requirement of an aquifer test and hydrogeological test.

A. Belle stated he wants to adhere to what he is required to comply with on the applicability table and the guidelines. The applicability chart states if he uses the subdivision of two or more lots with subscript 3, he could do a pump test now based on the gallonage as stated in 153-28. Unless he exceeds the 800 gpd, he is not required to comply with 153-29.

D. Pierce stated the applicant received the legal right to construct three dwellings, without a limitation on the number of bedrooms. The approval did not restrict the dwellings on the two lots to two bedroom dwellings. There is no way to tell if the applicant would be exceeding the 800 gpd.

A. Belle stated the conditions are not the Planning Board's jurisdiction. He has been issued well permits based on the 800 gpd. He is complying with the ordinance. He is aware that he will be required to do the aquifer test and report. He is requesting the Planning Board amend the resolution.

D. Pierce stated the Planning Board recognized the Well Ordinance was in a state of flux and allowed the subdivision to proceed and be perfected without the results of the aquifer testing. The question is whether the Planning Board should make any further changes to the approval.

R. Dodds requested A. Belle describe the hardship of complying with the resolution.

A. Belle stated Kingwood is committed to affordable housing. A two lot subdivision is a minor subdivision. The Township is requiring a minor to do the same testing as a fifty-five lot subdivision. The aquifer test process is approximately \$47,000. How can that be described as affordable housing? He can't pass that cost off on two lots and say you will have to pay a premium to build on his two lots. If it is a two lot minor

subdivision, it cannot comply with another ordinance as a major. He wants to be able to build and comply with the ordinance as written today. He stated his requests need to be addressed. He has a well drilling permit. He wants to send out the notices. After the well is certified and he provides potable water, he wants to be issued a building permit. He is requesting the Planning Board amend the resolution to indicate he will comply with the Well Ordinance.

D. Pierce stated the resolution was written because the Planning Board was granting BDAC relief from the requirement that it perform the aquifer test before it receives the deeds. It was protecting the ultimate owner of the third lot that may be sold some day. He might be able to build on the first two lots but the third lot will have to do the aquifer test and the costs will fall to the new owner of the third lot. It is disproportionate and unfair to the owner of the third lot. It may be one of the reasons the Planning Board wanted an aquifer test before any building permits were issued. The Planning Board was in its rights at the time of the application to require the aquifer test prior to the issuance of a building permit. If he were to apply today for this same subdivision, three new lots, which include the remaining lands, you would have to testify that the water usage was not going to exceed 800 gpd.

A. Belle inquired if the Planning Board has any authority over the Board of Health. A member responded no. His request is that he will comply with the Well Ordinance adopted by the Board of Health. The current owner and subsequent owners need to be aware of the requirements. The requirements of the resolution are over and above of what the Board of Health is requiring. The Planning Board needs to strictly state that he will have to comply with the Well Ordinance. The requirements will be determined by the Board of Health and Hydrogeologist. He obtained a Well Permit last year. The Planning Board is asking people to drill wells before subdivision.

D. Pierce stated the Planning Board determined, as the ordinance is written, the applicant could not have the subdivision until he does the aquifer test was not fair since it was recently amended. The Planning Board approved the subdivision, which was not fully conforming and required variances, with appropriate conditions for a variance. The Planning Board did not require the aquifer test prior to the release of the deeds but before any building permits were issued. Mr. Belle and I disagree over the applicability table. The exclusion for the remaining lands goes to the counting of the number of lots in a subdivision not the gallonage of the lots.

R. Dodds called for comments from the public.

It was moved by J. Mathieu, seconded by J. Strasser and carried to amend Resolution 2008-16 as follows:

1. The first Whereas Clause on page 6 of the Memorializing Resolution is hereby amended to read as follows:
“**WHEREAS**, the Board approved a design waiver to relieve Lot 17.04 from the restriction limiting the size of the dwelling unit to be constructed thereon to 3000 square feet; and”.
2. Condition number 13 of the Memorializing Resolution is hereby amended to read as follows:
“For any lot being developed, the conservation and hedgerow preservation easements shall be delineated in the field prior to the issuance of any building permit for that lot by the installation of two markers on each property at the outer boundary lines of such areas where such boundary lines intersect the outer edge of the hedgerow, with the second marker on Lot 17.05 located at the outer boundary line of the Category 1 stream buffer as close to the road as possible. The form of marker shall be subject to approval by the Board’s planner;”

3. Condition number 14 of the Memorializing Resolution is hereby amended to read as follows:
“Prior to the issuance of a building permit for any structure on any lot being developed, the applicant shall submit for that lot a baseline documentation report for all conservation and hedgerow easements documenting with photographs the installation of the boundary markers and the condition of the easement areas on that lot;”
4. Condition number 17 of the Memorializing Resolution is hereby amended to read as follows:
“No building/construction permit shall be issued for any lot unless and until a Certification of Well has been obtained as required by Kingwood Township Ordinance Section 153-24.”
5. Condition number 18 of the Memorializing Resolution is hereby amended to read as follows:
“Prior to the issuance of a certificate of occupancy, water quality testing shall be conducted on the well for each lot as required by Kingwood Township Ordinance Section 153-29. The test results shall be submitted to the Township’s hydrogeologist for review and determination as to whether a water treatment system is necessary.”
6. All other conditions and provisions of the Memorializing Resolution dated September 9, 2008 not expressly modified above shall remain in full force and effect.

and grant a 190 extension of time to file the deeds.

All members presented voted **AYE** on **ROLL CALL VOTE**.

Resolutions

It was moved by J. Mathieu, seconded by L. Senus and carried to adopt **Resolution No. 2009-09 – Cacciabauda – Block 36, Lot 3 – Boundary Line Adjustment**. All members presented voted **AYE** on **ROLL CALL VOTE**.

It was moved by J. Mathieu, seconded by D. Haywood and carried to adopt **Resolution No 2009-10 – Gross – Block 5, Lot 4 – Agricultural Subdivision Determination** with the following change:

Page 2 – Lot 4.034 should be 4.03;

Page 4 – Augustine should be replaced with Burke;

All members presented voted **AYE** on **ROLL CALL VOTE**.

It was moved by J. Mathieu, seconded by D. Haywood and carried to adopt **Resolution No. 2009-11 – Gross – Block 5, Lot 4 – Amended Site Plan**. All members presented voted **AYE** on **ROLL CALL VOTE**.

It was moved by D. Haywood, seconded by J. Mathieu and carried to adopt **Resolution No. 2009-12 – Route 12 Business Park – Conditional Use Determination**. All members presented voted **AYE** on **ROLL CALL VOTE**.

It was moved by J. Mathieu, seconded by D. Haywood and carried to adopt **Resolution No. 2009-13 – Laurelton Belmont – Amended Boundary Line Adjustment**. All members presented voted **AYE** on **ROLL CALL VOTE**.

Proposed Ordinance 15-06-2009

D. Pierce stated the revised junkyard ordinance now contains a penalty section.

It was moved by D. Haywood, seconded by L. Senus and carried to recommend adoption of proposed Ordinance No. 15-06-2009 to the Township Committee. All members presented voted **AYE** on **ROLL CALL VOTE**.

Proposed Flood Plain Ordinance

D. Pierce stated the changes in the ordinance comply with DEP's new requirements. T. Decker submitted a letter to the Board indicating the amendments are in accordance with the proposed changes.

It was moved by J. Mathieu, seconded by D. Haywood and carried to recommend adoption of the proposed Flood Plain Ordinance to the Township Committee. All members presented voted **AYE** on **ROLL CALL VOTE**.

Approval of Minutes

It was moved by J. Mathieu, seconded by J. Strasser and carried to approve the minutes of June 9, 2009 and place on file. All members presented voted **AYE** on **ROLL CALL VOTE**.

APPLICATION STATUS

CORRESPONDENCE

The correspondence was reviewed as per the agenda.

PRIVILEGE OF THE FLOOR

E. Gural, Block 9, Lot 15, was present this evening and requested some assistance in submitting a complete application for a boundary line adjustment. He indicated he was having some difficulty getting in contact with his surveyor. J. Mathieu offered him assistance in contacting the surveyor. He was advised to request waivers for any items on the checklist that he could not provide.

Solar Wind Generating

D. Pierce responded last month the Planning Board requested the Environmental Commission to research a solar/wind generating ordinance. He hasn't received anything from the Environmental Commission. He stated the legislature has passed the bill and it is waiting for Gov. Corzine's signature. The bill deems it an inherently beneficial use. Any one who proposes one for residential use or a commercial enterprise will have to go to the Board of Adjustment for approval. They will have to provide substantially less proof to have a variance granted.

A. Clerico stated Banisch and Associates will be sending the sustainable committee a list of projects for grants from the DEP program. There are a number of categories, such as land use, transportation, energy efficiency, water and demonstration projects. The pre-application date is due by July 31, 2009 and the full application due

in November. It is a year long grant. The awards could be up to \$300,000 depending on how big or small the project.

D. Posey stated J. Burke had Kingwood enrolled in a program with the BPU clean energy program for a \$115,000 rebate for solar panels at the garage. The Township was awarded the grant in February and it is valid for one year. There is a 180 day requirement to sign a contract which is towards the end of August. The project will have to go out for bid. He has established a contact with two people at the Clean Energy Program and the BPU has a list of 32 contractors.

R. Dodds will contact J. Burke.

ADJOURNMENT

It was moved by J. Mathieu, seconded by J. Strasser and carried to adjourn the meeting at 9:07 PM. All members presented voted **AYE**.

Respectfully submitted,

s/Diane Laudensch

Diane Laudensch, Secretary