

## MINUTES

**PRESENT:** R. Dodds  
D. Haywood  
T. Kratzer  
J. Mathieu  
S. McNicol  
E. Niemann (7:45 PM)  
J. Strasser  
D. Banisch, Planner  
D. Pierce, Attorney

**ABSENT:** J. Burke  
L. Senus  
M. Syrnick, Alt #1

### CALL TO ORDER

The meeting was called to order at 7: 32 PM by R. Dodds.

### 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

Nagy – Block 14, Lots 31.03 and 33 – Boundary Line Adjustment – Route 29 & Fairview Road

R. Nagy, C. Nagy, B. Nagy and K. Page, engineer, were present for the meeting this evening.

R. Dodds inquired if the applicant had submitted the plans in a “pdf” format. K. Page responded they have not provided the plans in an electronic format.

K. Page, Page Engineering and Consulting, is a professional engineer and planner. He is here this evening representing the Nagy family. The application is to move the lot line. The applicant has performed soil testing to ascertain perc ability. They have submitted an application to the County Planning Board and were granted a waiver. They have applied to the Hunterdon County Soil Conservation District (HCSCD) and have been informed to apply after approval and construction of the home. They have submitted to the DEP and received a Letter of Non-Jurisdiction. He will provide copies to the Township of the approvals. He has received T. Decker’s report dated November 5, 2010. The changes requested by T. Decker were minor and will be done on one revision after approval. The

application starts with two lots and ends with two lots. It will bring the existing undersized lot more in conformance to the seven acre zoning.

D. Pierce stated the application is relatively strait forward and compliant with the bulk requirements. The biggest issue is the 40' wide easement across Lot 33.02 for the benefit of Lot 31.03. He would like to hear some testimony as to what the easement will be used for in the future. K. Page responded it will be an access drive. Even though the Nagy home is actually located on Fairview Road, it is at a much lower elevation than the farm fields. The easement is to access the farm fields. They will use the same driveway for the future home of B. Nagy but not lose their access. If the property is sold, they would continue to have access. D. Pierce inquired if any thought was given of whether the applicant would want to use the easement to provide access if there was further development on Lot 33.01. K. Page stated the applicants would be entitled to four lots. The reason for the easement is to continue to have access to the field. If a lot was ever to be subdivided off, this easement would be the access. It is topographically difficult to access the field off of Fairview Road.

K. Page, referring to sheet 1 of 2, indicated the property is in the dark shading. The sheet indicates Route 29 and Fairview Road. North is to your left. The crosshatching is the existing road. On sheet 2, the existing driveway is shown providing access to the upper fields and to the home. The easement is requested because the applicant wants to make sure if the property is ever transferred, they will still have access. He contemplates there might be another subdivision in the future and they would utilize the easement. D. Pierce stated the application would require variance relief because that potential lot would not have frontage on a public road. K. Page responded the road would become public. D. Pierce stated, in the future if the easement is converted to a road, there will be an area to the south and west of that road that will be isolated and unusable land. The road would create a new lot line and the lot would not be conforming or developable under Kingwood Township's standards. D. Pierce suggested moving the lot line south and keep the same acreage on the lots. He stated that configuration would give the applicant the ability to have a conforming lot coming off the flag stem without variance relief. K. Page stated the applicant would not want to create a new driveway. The transfer or further development of the lot may not happen in their lifetime. If it does happen and it comes before the Board, there is nothing that would preclude them from making that adjustment at a later date. D. Pierce stated he just wanted to notify the applicant of the ramifications of the configuration of the current application. The applicants decided to amend the application to provide for the 50' staff on the larger lot.

It was moved by J. Mathieu, seconded by S. McNicol and carried to approve the application with the following conditions:

1. Review and approval by the Board's professionals, and recordation within 190 days, of deeds perfecting the boundary line adjustment.
2. Review and approval by the Board's professionals, and recordation simultaneously with the deeds, of the proposed easement across Lot 31.03 for the benefit of Lot 33.
3. Submission of a plat revised to:
  - a. Depict the reconfiguration of the proposed lot lines to provide Lot 33 with 50 feet of frontage along State Highway Route 29; and
  - b. Satisfy the comments contained in the November 5, 2011 review letter from

Thomas Decker, P.E.; and

- c. Contain corrected information in the Table of Zoning Information.
4. Submission of the revised Plat in electronic format.
5. Receipt and submission of a letter of non-jurisdiction from the New Jersey Department of Environmental Protection.
6. Receipt and submission of a letter of approval of a Soil Erosion and Sediment Control Plan from the Hunterdon County Soil Conservation District.
7. 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 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.
8. 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.
9. 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.
10. 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.
11. 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 present voted **AYE** on **ROLL CALL VOTE**.

Windpowered Generation Towers

D. Banisch reviewed his memo of December 11, 2010 to the Board and proposed draft ordinance.

Wind Energy Development – Background Information.

It appears that the income tax cut extension legislation that is being developed in Washington will continue expiring alternative energy tax credits and funding for wind and solar alternative energy facilities in 2011.

We have researched wind energy facilities information provided through the US Department of Energy to identify the relative merits of establishing alternative wind power facilities in Kingwood Township, and offer the following comments for the Planning Board’s consideration:

The US Department of Energy’s Wind Program, National Renewable Energy Laboratory (NREL) published a 2010 wind resource map for New Jersey. The wind resource map shows the predicted mean annual wind speeds at 80-m height (262’ above ground level). According to NREL mapping, areas with annual average wind speeds around 6.5 meter/second (m/s) and greater at 80-m height are generally considered to have a suitable wind resource for wind development.

For Kingwood Township, the map shows that the mean annual wind speed at 80-m height (262’) is rated 5 m/s for the majority of the Township. Along a narrow band of land, which appears to include the bluffs near Stockton, the map shows that the area mean annual wind speed rating is 4.5 m/s. No area of Kingwood Township has a mean annual wind speed rating above 5 m/s on the map. Based upon the DOE information for wind energy development, it would appear that even at a considerable height (260’ ±), wind conditions in Kingwood are marginal for the development of wind energy.

Another source of information from the Department of Energy, entitled “Small Wind Electrical Systems, A US Consumer’s Guide” provides guidance to consumers related to the size of a turbine required and the wind requirement for a home wind electrical generating system. It states that:

“A typical home uses approximately 10,000 kilowatt-hours (kWh) of electricity per year (about 830 kWh per month). Depending on the average wind speed in the area, a wind turbine rated in the range of 5 to 15 kW would be required to make a significant contribution to this demand. A 1.5- kW wind turbine will meet the needs of a home requiring 300 kWh per month in a location with a 14- mile-per-hour (6.26-meters-per-second) annual average wind speed.”

Additional information in the guide states that wind energy systems connected to the grid may be feasible in areas with an average annual wind speed requirement of as little as 4.5 m/s, depending on local electrical energy costs (at least 10 to 15 cents per kilowatt hour), the cost of electrical utility connection requirements and the distance between the wind turbine and the actual connection to the grid. These variables, combined with the marginal average annual wind speed in the area may help explain why the Township has not witnessed much interest in wind energy development to date.

Draft Ordinance Amendment

The following proposed ordinance amendment replaces existing ordinance provisions for ‘energy-generating equipment driven by wind’ as permitted accessory uses, which are found at §132-50.D., E. & F., establishes ‘small wind energy systems’ as permitted accessory uses with proposed standards, and establishes wind energy systems as permitted uses in the BP Zone.

- §132-50.D. currently reads as follows:  
 “D. Energy-generating equipment driven by wind, including structures, towers or poles. Energy-generating equipment driven by wind is permitted. (This is to be replaced in its entirety with a new Subsection D. as per below.)
- §132-50.E. currently reads as follows:  
 E. Height and area of accessory buildings and structures. The height and area of accessory buildings shall be as prescribed in Article II, ~~except for energy-generating equipment driven by wind, including structures, towers or poles, which, if it meets the setback requirements described in Subsection D. above, may be such height as necessary to function adequately, provided that the structure, tower or pole complies with all building and electrical codes.~~ (Strike-through text above ~~thus~~) is to be repealed.)
- §132-50.F – a portion of which reads “. . . ; provided, however that energy-generating equipment driven by wind, including structures, towers or poles, may be erected in any yard, provided that it meets the setback requirement set forth in Subsection D.”

**SECTION ONE.** Amend §132-4 “Definitions” to include the following new definition:

SMALL WIND ENERGY SYSTEM -A wind energy conversion system, consisting of a wind turbine, a tower, and associated control or conversion electronics, that is used to generate electricity and has a nameplate capacity of 100 kilowatts or less.

**SECTION TWO.** Replace §132-50., subsection D., in its entirety, with the following new Subsection D, to read as follows:

§132-50.D. Small wind energy systems.

- (1) Minimum lot size: 20-acres.
- (2) The maximum height shall be 180' including any portion of the rotor when in operation.
- (3) The minimum setback of the small wind energy system from any property line shall be 100' or 150 percent of the system height, whichever is greater.
- (4) The wind generator and the tower may be located in side and rear yard areas only. Associated control or conversion electronics, wiring and utility poles that are necessary for connection and power consumption on the property shall be set back from all property lines as prescribed in §132-50.F. below.
- (5) The wind generator and the tower shall remain painted or finished in the color or finish that was originally applied by the manufacturer, unless a different color or finish is approved by the approving authority.

- (6) There shall be no signs visible from any public road or neighboring property posted on a small wind generator system or any associated building, except for the manufacturer's or installer's identification, appropriate warning sign, or owner identification.
- (7) Sound levels of the wind energy system shall not exceed 55 decibels as measured at the property line.
- (8) Abandonment.
  - (a) A small wind energy system that is out-of-service for a continuous 12-month period will be deemed to be abandonment. The Zoning Officer shall issue a Notice of Abandonment to the owner of a small wind energy system that is deemed to be abandoned. The notice shall be sent return receipt requested.
  - (b) The property owner shall have 30 days to respond to the Notice of Abandonment from the receipt date of the Notice.
  - (c) If the property owner provides information that demonstrates the small wind energy system has not been abandoned, the Zoning Officer shall withdraw the Notice of Abandonment and notify the property owner that the Notice has been withdrawn.
  - (d) If the Zoning Officer determines the small wind energy system has been abandoned, the property owner shall remove the facility in its entirety at the owner's sole expense within 3 months after the owner receives the Notice of Abandonment.
  - (e) If the property owner fails to remove the facility in the time allowed under (d) above, then the Township may remove such system and place a lien on the property for the cost of the removal.
- (9) The small wind energy system shall not cause flickering shadows on adjoining properties.
- (10) The small wind energy system shall not be visible from any portion of the Delaware River and its Tributaries included in the National Wild and Scenic Rivers System.
- (11) The small wind energy system shall comply with all applicable building and electrical codes.

**SECTION THREE.** Amend §132-50.E to repeal the following provision “except for energy-generating equipment driven by wind, including structures, towers or poles, which, if it meets the setback requirements described in Subsection D. above, may be such height as necessary to function adequately, provided that the structure, tower or pole complies with all building and electrical codes.” so that Subsection E. shall now read as follows:

“E. Height and area of accessory buildings and structures. The height and area of accessory buildings shall be as prescribed in Article II.”

**SECTION FOUR.** Amend §132-50.F. “Location.” to repeal the following provision: “; provided, however that energy-generating equipment driven by wind, including structures, towers or poles, may be erected in any yard, provided that it meets the setback requirement set forth in Subsection D.” so that Subsection F. shall now read as follows:

“F. Location. An accessory building may be erected in side and rear yard areas only at no less distance from the front lot line than the principal structure and shall be set back from side and rear lot lines as prescribed in Article III, and the Schedule of Lot and Building requirements located at the end of this chapter, except that, if erected on a corner lot, the accessory building shall be set back from the side street to comply with the setback line applying to the principal building for that side street, and except further that no poultry or livestock shelter shall be erected nearer than 100 feet to any lot line.”

**SECTION FIVE.** Amend §132-35.B. Permitted principal uses for the BP Business Park Zone, to add the following permitted principal uses, which shall read as follows:

(9) Major solar or photovoltaic energy facilities or structures in accordance with the provisions found at §132-60.A.

(10) Wind Energy Systems, in accordance with the provisions found at §132-50.D.

\* \* \* \*

We note that SECTION FIVE above includes a provision for the Major solar or photovoltaic energy facilities or structures. This is included to correct an error that we noticed in the recently adopted solar facilities ordinance.

As a result of discussion regarding noise levels, D. Banisch will find examples of recognizable items to match the decibels.

### **PRIVILEGE OF THE FLOOR**

C. Niciecki, 1116 State Highway 12, was present to inform the Planning Board about the activities on her neighbor’s property, owned by Copper Creek Landscaping. Her neighbor is bringing in numerous tractor trailer loads of leaves from Passaic County. He is making these composting mountains and is encroaching on her property line. The leaves are producing a very unpleasant odor and making her sick. She is present this evening to inquire if there are any ordinances which relate to dumping, affecting a neighbor or odors. The leaves are a fire hazard. She feels the activity goes beyond the Right to Farm Act. It is being used as a dumping ground. You can see it from the highway. The material is creating environmental problems by polluting the ground water. R. Dodds showed the property on the overhead by an aerial photo dated August 30, 2010. C. Niciecki stated it has gotten bigger. There is another spot closer to the highway. Copper Creek is getting paid to accept the leaves. C. Niciecki stated he uses a loader to mulch up the leaves and is making these giant rows. There is a distance of approximately 50’ or less between the edge of the pile and the property line. There are also landscape limbs and trimmings. There are no trucks going out just coming in.

D. Pierce stated the issues with this activity are:

Littering – this would qualify as refuse and the dumping of refuse is prohibited. This activity is or would be considered disposable solid waste and/or composting of the material. In order to operate

a solid waste facility, a permit from DEP is required and a permit for composting;  
Lack of Site Plan.

D. Pierce stated he is filling the land with no grading plan and the odor issue is part of the composting issue.

S. McNicol stated the owner should have appeared for site plan approval for a nursery business. D. Banisch stated the application might be before the Board of Adjustment because it is not a permitted use in that zone.

D. Pierce responded he has not appeared before the Board of Adjustment.

C. Niciecki stated the front of the property is in the Highway Commercial and the rest is in the AR-2 Zone. D. Pierce stated nurseries are permitted in the HC Zone but the operation is not a nursery but a solid waste facility. D. Pierce stated, regardless of what zone the property is located, solid waste disposal is not a permitted use in either zone.

D. Pierce stated the Board could submit a request to the Zoning Officer to take action to notify this property owner that he is in violation of the zoning ordinance and to immediately cease and desist the activity on the property.

### **Checklist Amendment – Environmental Impact Study**

E. Niemann stated the Time of Decision Rule takes effect in May and the Board should consider adopting any ordinances prior to May 11, 2011.

R. Dodds will speak to the Chairperson of the Environmental Commission to see if there were any comments.

### **Resolution No. 2010-18 -Open Space and Recreation Plan Element**

D. Banisch stated he did not complete the mapping and two changes requested by the Board in time for the 10 day limit of availability to the public.

It was moved by J. Mathieu, seconded by D. Haywood and carried to adjourn the hearing until the January meeting. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Time of Decision Rule**

E. Niemann inquired if there is a better sense of the definition of what constitutes an application. D. Banisch responded it is a complete application. D. Pierce stated no one can submit an application that is incomplete and then rely on the time of decision rule. The review period does not begin until the application is complete. D. Pierce would have to pull the legislation and review it for that issue. E. Niemann stated questions have been raised in a number of situations and there have been a number of responses. D. Pierce responded it may not be determined until someone takes it to court. D. Pierce stated complete indicates the application does not have any requirements for additional information. If

upon review for a determination of completeness, certain information required on the checklist is missing, the application is not a complete application.

D. Banisch left the meeting at 8:55 PM.

**RESOLUTIONS**

It was moved by J. Mathieu, seconded by S. McNicol and carried to adopt **Resolution No. 2010-20 - BDAC – Block 23, Lot 17.02 – Barbertown Point Breeze Road – Request for Extension of Time to File**. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by J. Mathieu, seconded by S. McNicol and carried to adopt **Resolution No. 2010-21 - Sargenti – Block 1, Lot 6 – Ridge Road – Approval to Construct Barn over 5,000 sq ft**. All members present voted **AYE** on **ROLL CALL VOTE**.

**Resolution No. 2010-22 – Garden Solar – Block 15, Lot 4.03 – Preliminary Site Plan Approval**

R. Dodds stated there was one line of testimony given during last month’s meeting in regard to the berm that exists between the two properties, Lot 4.03 and Lot 5. A response was given that the berm consisted of dumped material. He inquired if it would be appropriate to bring up the berm during final approval. D. Pierce responded the approval does not relate to the berm itself and would have the very same arguments and issues as those of the composting. If it was waste material when it was brought in, the Board can ask those questions during final site plan review. The owner would be addressed as in the Copper Creek discussion. It is not part of the site plan application.

It was moved by J. Strauss, seconded by S. McNicol and carried to adopt **Resolution No. 2010-22 – Garden Solar – Block 15, Lot 4.03 – Preliminary Site Plan Approval** with the following corrections:

- Page 9 - #26 – Line 2 – should be 2 five year renewals;
- Page 10 - #31 – “propose” should be “proposed”;
- Page 13 – in “Therefore Resolved paragraph - final approval should be removed;
- Page 15 – #3.i - “sing” should be “sign”;
- Page 15 – Two #6’s;
- Page 20 - #27 – three lines from the top – “shaving” should be “sharing”;
- Page 20 - #28 – “Board of Adjustment” change to “Planning Board”;

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

**Approval of Minutes**

It was moved by J. Mathieu, seconded by S. McNicol and carried to approve the minutes of October 12, 2010 and place on file. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by J. Mathieu, seconded by T. Kratzer and carried to approve the minutes of November 9, 2010 and place on file with the following corrections:

- Page 8 - Change “geothechnical” to “geotechnical”;
- Page 8 - “are” should be “area”;
- Page 10 – fire “retarded” should be “retardant”;
- Page 10 – revise the sentence “D. Pierce suggested the Board require for preliminary approval submit a plan for access” to “D. Pierce suggested the Board require the applicant to submit a plan for access for preliminary approval.”
- Page 12 – #3.i - “sing” should be “sign”;
- Page 13 - #28 – line 8 – “shaving” should be “sharing”;
- Page 13 - #29 – “Board of Adjustment” change to “Planning Board”;

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

### **2011 Budget Request**

It was moved by J. Mathieu, seconded by S. McNicol and carried to request \$25,000 from the Township Committee for the Planning Board Other Expense Budget for 2011. All members present voted **AYE** on **ROLL CALL VOTE**.

### **PUBLIC COMMENTS**

L. Frank stated the Board was so focused on the view of not seeing the development that they were not worried about safety. Safety is the overriding factor. It is the only facility without a fire suppression system. They do burn and are lightening magnets. He stated the applicant’s answer your concerns and tell you what you want to hear. The Board should have the fire department, rescue squad and road department review the application. The applications are industry and they are about making money. The fire alarm will be if someone drives by and sees it. E. Niemann responded the site is monitored remotely. She stated the applicant has been required to consult with the fire department. She suggested it be put into the ordinance. L. Frank stated it is not a solar farm but a solar facility installed on farmland. It is not a farming procedure. The state does not name it as a solar farm.

R. Dodds stated if the fire company does not give approval, they will be requested to attend the final approval hearing.

E. Niemann stated the Wastewater Management Plan has to be done by April or May.

### **2011 Re-Organization Meeting**

After some discussion, it was decided to schedule the 2011 Re-Organization meeting for Thursday, January 13, 2011 beginning at 7:30 PM.

### **APPLICATION STATUS**

### **CORRESPONDENCE**

R. Dodds reviewed the correspondence as per the agenda.

## **PRIVILEGE OF THE FLOOR**

T. Kratzer stated the Delaware Valley College used the Township's park as a design feature for water controls for one of their classes. There were six different presentations and they were outstanding. They are submitting their designs for the Township's website indicating how it would potentially visually affect the park.

E. Niemann stated, not for any reason other than for financial reasons, the Township Committee has requested proposals for planning and engineering for 2011.

R. Dodds thanked D. Laudенbach and D. Pierce for their services this year.

## **ADJOURNMENT**

It was moved by S. McNicol, seconded by T. Kratzer and carried to adjourn the meeting at 9:54 PM. All members present voted **AYE**.

**Respectfully submitted,**

**Diane Laudенbach, Secretary**