

**MINUTES**

**7:30 PM**

<b>PRESENT:</b>	R. Dodds	<b>ABSENT:</b>	D. Haywood
	P. Lubitz		T. Kratzer
	S. McNicol		J. Mathieu
	L. Sensus		E. Niemann
	M. Szymnick, Alt. #1		J. Strasser
	T. Decker, Engineer		
	D. Pierce, Attorney		
	J. Slagle, Planner		

**CALL TO ORDER**

The meeting was called to order by R. Dodds at 7:42 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**

**Cacciabaudo – Block 37, Lots 3.05, 3.06 & 3.07 – Federal Twist Road – Request for Extension to File**

B. Szaferman, attorney for the applicant was present this evening. The applicant is appearing before the Board for two reasons, one to request an extension of time to file the deeds and to advise the Board of the change in the length of the cul-de-sac. The DEP has granted the approval to widen the proposed driveway to the 16' required by the approving resolution.

T. Decker stated the DEP permit has been issued. Originally the DEP permit was issued for a driveway with a 10' width. The Township standard is 16'. The condition of approval required the applicant go back to the DEP and request a widening of the driveway to the required 16'. If the applicant was not able to get the permit, the driveway would be able to stay at 10'. He stated the standard for the common driveway is for it to be paved. The applicant requested the driveway be constructed of stone to reduce the amount of impervious surface. The Board agreed with that request providing the applicant supply a geotechnical report that the driveway's carrying capacity was adequate for large vehicles. After reviewing the geotechnical report, the driveway is essentially an impervious surface which creates some additional stormwater issues.

B. Sutherland, engineer, stated the original approval provided for the cul-de-sac to go to the third lot. The compaction of the road made the road impervious. The reconfiguration eliminates .2 acres of roadway and tree

disturbance. It will also require a smaller detention basin. The applicant is requesting to move the cul-de-sac back to the property line which would reduce the impervious surface.

T. Decker had no objection to the reconfiguration providing proper easements were in place around the cul-de-sac.

B. Sutherland stated Lot 3.06 will grant an easement to Lot 3.05 to access the property.

D. Pierce stated to make the application technically clean, the Board should consider adopting a resolution to reflect the change and add a condition relating to the driveway easement.

It was moved by L. Senus, seconded by M. Syrnick and carried to grant a 90 day extension of time to file the deeds, reflect the change in the length of the cul-de-sac and impose the additional easements. All members present voted **AYE** on **ROLL CALL VOTE**.

#### Garden Solar – Block 15, Lot 4.03 – Slacktown Road – Final Approval

W. Wilson, attorney for the applicant, stated the applicant is appearing this evening to obtain final site plan approval. They have satisfied all the conditions of preliminary approval. At last month's meeting there was a discussion pertaining to the berm on the property. W. Wilson stated he discussed the type of testing the Township was requesting for the berm. The applicant has followed the protocol from T. Decker.

C. Nusser was sworn in by D. Pierce.

C. Nusser provided his credentials to the Board and stated he is employed by Engineering and Land Planning Associates. He has worked on the engineering aspect of the application since its inception but the plat is not signed by him. He has testified before the Board of Adjustment as well as other locations regarding solar applications.

C. Nusser stated the testing of the soil berm area was done in accordance with the New Jersey Department of Environmental Protection technical requirements for Site Remediation (N.J.A.C. 7:26E). The soil samples were taken at a depth that reached the lower portion of the berm. The testing results were provided in his firm's report to the Board on July 14, 2011. All of the results were below state standard except two base neutral compounds Benzo(a)Pyrene{b(a)p} (1.3 mg/kg, whereas NJDEP SRS is 0.2 mg/kg) and dibenz (a,h)anthracene (0.3 mg/kg, whereas its SRS is 0.2 mg/kg). Both of these compounds are attributed to the entrainment of small asphalt particulate in the soil samples. NJDEP has issued guidance that both concrete and asphalt millings are inert fill materials.

T. Decker stated he agrees with the comments made by C. Nusser. There is no problem with the berm in its current state. His office was present for the extraction of the samples. The samples that were taken were evenly distributed along the berm. He is satisfied with the report.

P. Lubitz inquired in the future there will be a number of berms built, what does this determination have on the other berms? R. Dodds stated he does not think this creates a precedence. It is pre-existing to the current owner. R. Dodds stated the Township took no action when it was created. If someone was going to build a berm, the materials would not be permitted in a future berm.

W. Wilson stated at last month's meeting a comment was made that the Township received a call that the security lighting was shining in someone's window. The applicant addressed the issue with the contractor the next morning. T. Decker's office went out and reviewed the position of the lights. The lights were adjusted. T. Decker stated the lighting was basically a portable 4 fixture light unit on a trailer. It was there for security purposes. The contractor moved the lights to shine downward. The lights will be removed once the perimeter fence is completed. They have round the clock security at both of the facilities.

W. Wilson stated the lights are present until the fence is completed. The lights will be removed at the completion of the site.

P. Lubitz stated the Township appreciated how quickly the applicant acted on the issue.

T. Decker stated the applicant has satisfied all the conditions of preliminary approval. They have posted the escrow and there was a pre-construction meeting. There are no comments on the plans themselves. There is an issue with regard to the planting of the landscaping and the issuance of the Certificate of Occupancy.

W. Wilson stated the applicant wants to deal with the issue proactively. The applicant will be completing the racking system and modules within thirty days. They may be ready to turn on or connect to the lines to convey the power by the end of August. The middle of August is not the best time to install landscaping. The applicant has recently completed the bid process through an RFP for the landscaping. Every single bidder, in order to provide the 5 year guarantee, wanted to wait until after October 1 to install the landscaping. The applicant is requesting the Township enter into a developer's agreement to require the planting to be completed by March 15, 2012. The applicant will post a performance bond to insure the landscaping is installed. There would have to be extraordinary circumstances for it not be done this fall, such as a terrible heat wave and sudden frozen ground. The professionals wanted the applicant to make the request to the Board.

It was moved by S. McNicol and seconded by L. Senus to grant final approval subject to the conditions of preliminary approval that continue as conditions of the overall site plan, require a developer's agreement and the posting of a performance bond for the landscaping to be installed no later than March 15, 2012. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Proposed Ordinance No. 16-20-2011 – Wind Generating Ordinance**

D. Pierce stated there are no substantive changes from what the Board reviewed and recommended to the Township Committee. It is basically the same ordinance provided to the Board by D. Banisch. D. Banisch had not acted on it because of a concern relating to a case that has been decided. He stated it corrects an existing deficiency in the ordinance. He stated commercial farms would be regulated by the SADC.

S. McNicol stated, when the original ordinance was discussed in January, the Board discussed the maximum height shall be 180' and talked about dropping it to 120'. D. Pierce responded it was discussed but there was no consensus to drop it to 120'.

After some discussion on the rotor and blades, it was decided to add to "or blades" to Section 132-50.D (2).

It was moved by P. Lubitz, seconded by M. Syrnick and carried to recommend adoption of proposed Ordinance No. 16-20-2011 to the Township Committee with the above non-substantive change. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Re-Examination Report**

R. Dodds recommended, since the full Board is not present this evening, the Board can discuss the matter at the special meeting on July 27<sup>th</sup>.

P. Lubitz stated he would prefer to have it at the regularly scheduled meeting on August 11, 2011.

R. Dodds announced it will be listed on the agenda for the August 11, 2011 meeting.

R. Dodds excused T. Decker and J. Slagle at 8:21 PM.

## **PRIVILEGE OF THE FLOOR**

### **APPROVAL OF MINUTES**

It was moved by P. Lubitz, seconded by L. Senus and carried to approve the minutes May 12, 2011 Executive Session. 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. All members present voted **AYE** on **ROLL CALL VOTE**, except M. Synchron, who **ABSTAINED**.

It was moved by P. Lubitz, seconded by L. Senus and carried to approve the minutes of June 9, 2011 Regular Session. All members present voted **AYE** on **ROLL CALL VOTE**, except S. McNicol and M. Synchron, who **ABSTAINED**.

It was moved by P. Lubitz, seconded by L. Senus and carried to approve the minutes of June 9, 2011 Executive Session. 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. All members present voted **AYE** on **ROLL CALL VOTE**, except S. McNicol and M. Synchron, who **ABSTAINED**.

## **EXECUTIVE SESSION**

### **RESOLUTION NO. 2011-08**

**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, 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 – Sundancer Capital LLC**

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 P. Lubitz, seconded by S. McNicol and carried to adopt the foregoing resolution. All members present voted **AYE** on **ROLL CALL VOTE**.

R. Dodds announced the Board has returned to regular session.

#### Draft Ordinance Environmental Impact and Assessment (SEIA) and Preservation of Threatened and Endangered Species and Suitable Habitats

S. McNicol stated the matter was discussed at the January meeting. The Board should discuss if they want to recommend adoption of an EIA to the Township Committee. She stated a model ordinance from Millstone was chosen as the example. A brief discussion was had among the Board members on what would trigger the requirement. D. Pierce stated, if the application requires review and permitting by the DEP, they might require a study of the Threatened and Endangered Species but if no review or permitting is required by the DEP, then no study would be required. In order to implement the requirement, the Township would have to amend their checklist and adopt a development standard in the ordinance indicating that development shall not adversely impact Threatened and Endangered Species.

#### Proposed Bill A3992 – Energy Generation Facilities, Structures & Equipment on Farms

A. Belle inquired if the Board was going to discuss proposed bill A-3992. R. Dodds stated if the law is passed it removes some of the Township's planning tools and ability to regular that use. P. Lubitz stated it hasn't been scheduled in a second committee and the legislature is adjourning until after the election. The Township will receive an alert if there is any movement on the bill. It may be a bill that might have something in the lame duck session. It is does not move after the election, if at all, it will have to be reintroduced in January. D. Pierce added it only affects properties that have 33 acres or more. D. Pierce stated 150% of the height is the restriction of the Township's ordinance regarding the fall zone.

#### Proposed Ordinance No. 16-20-2011 – Wind Generating Ordinance

After some discussion, it was moved by P. Lubitz, seconded by L. Senus and carried to recommend proposed Ordinance No. 16-20-2011 be amended by inserting "occupied residential buildings" in to the ordinance. All members present voted **AYE** on **ROLL CALL VOTE**.

#### APPLICATION STATUS

#### CORRESPONDENCE

**ADJOURNMENT**

It was moved by P. Lubitz, seconded by S. McNicol and carried to adjourn the meeting at 9:11 PM. All members voted **AYE**

**Respectfully submitted,**

**Diane Laudenschach, Secretary**