

**MINUTES  
TOWNSHIP OF FRELINGHUYSEN  
PLANNING BOARD  
REGULAR MONTHLY MEETING  
March 7, 2011**

(Meeting Start Time: 7:30pm – No new testimony after 10:30pm)

**CALL TO ORDER**

The March 7, 2011, Regular Monthly Meeting of the Township of Frelinghuysen Planning Board was called to order at 7:40pm.

**ANNOUNCEMENT OF PROPER NOTICE**

Notice of this meeting was provided by advertising in the New Jersey Herald and the Express Times, official newspapers of the Township of Frelinghuysen Planning Board. Notice has been posted in the Township Municipal Building in Johnsonburg. As advertised, action may be taken at this meeting.

**FLAG SALUTE**

**ATTENDENCE**

***Board Members present:***

|          |             |             |           |              |
|----------|-------------|-------------|-----------|--------------|
| K Bailey | A DeCarolis | C Calcagne  | R Corvino | F Desederio  |
| D Eitner | R Randolph  | J Simonetti | R Young   | D Zilberfarb |

D Barrow – absent

***Professionals present:***

M Lavery, Attorney      D Jay, Planner      J Golden, Engineer

Mr. Lavery spoke to Mr. Gold who represents the Charter School who is here this evening With the Board of Trustees, the technical term, to discuss completeness. It was noted that we will have them on for next month, as there are some escrow issues that would need to be discussed in Executive Session, also any additional paperwork along with their applications if needed. This will be resolved and will be able to bring them back for completeness as well as for public hearing. A question as to what is the official newspaper of the town. It was answered NJ Herald and the Express Times. We thanked them for their time and coming out this evening.

**NEW BUSINESS**

The proposed Route 94 Zone Change Master Plan consistency Review-Project MC FRB-001 is to be carried over to Executive Session.

## **MINUTES (Draft only)**

Ms Jay pointed out about COAH Monitoring – deadline for the monitoring must be completed by April 15, 2011.

Ms. Randolph – correction on 2<sup>nd</sup> page, 3<sup>rd</sup> paragraph, last sentence

Mr. Golden - Outdoor Wood Burning stove – make corrections to the Ordinance.

Mr. DeCarolis made a motion to approve the February 7, 2011 minutes and was seconded by Mr. Desiderio. All in favor “AYE” – none opposed. Mr. Zilberfarb– abstained.

## **DEEDS**

Mr. Golden forwarded onto Mr. Lavery for comments. Mr. Lavery will send a letter to NW Properties asking them to replenish their escrow to 100% as per Ordinance and then they can request a refund after professional services were completed and paid. The \$1000.00 they sent was to cover the escrow for the past, but possibly not cover the future. The Board chair wants them to replenish 100% and upon payment of all bills, they can request their refund for the remaining balance. The escrow account was low. That decision was done on Thursday. Ms. Eitner questioned if that needed to be amended in the minutes.

## **RESOLUTIONS**

**McEvoy, Block 1001, Lots 2 & 3** – The preliminary major site plan extension was granted for 1 year not to exceed February 26, 2012. There is a resolution that indicates their extensions and if that should come up, we will have a record as to know exactly what happened. A motion was made by Ms. Randolph and was seconded by Mr. DeCarolis. Roll Call: Mr. DeCarolis, yes – Mr. Calcagne, yes – Mr. Corvino, yes – Mr. Desiderio, yes – Mrs. Eitner, yes – Ms. Randolph, yes, - Mr. Simonetti, yes – Mr. Young, yes, - Mr. Zilberfarb, yes – Mr. Bailey, yes.  
Mr. Barrow – abstained.

## **ORDINANCES**

### ***Outdoor Wood Burning Boilers***

Mr. Golden made the changes as discussed on Thursday item 4.3 & item 4.4 definitions (it’s an addition) believed to agree to Phase II, item 5.1 replaced the old item 5.1 – basically states that you have to have Phase II burner because the first place was just definition. Item 5.2 was modified from 300’ to 200’ and changed from side rear lot line to any lot line. Mr. Golden added only seasoned wood or other solid fuel to the 5.3. Item 5.4 is now the single sentence. I do want to bring the board’s attention to 5.8. He added Mr. O’Connor’s comments and added some additional clarification – that’s really the last plus sentence, issuance of a building permit, and or UCC permit does not guarantee that a unit will meet DEP requirements. It is the owner’s responsibility to ensure compliance with all applicable permits. (see attached form which the board agreed to be signed by the applicant). This is to clearly state that the applicant has been advised of all the rules. Mr. Lavery didn’t feel it was necessary to have this form notarized, but have a witness to the signature. If this does get approved, and forwarded to the Committee, this form has to be modified and become a part of the Ordinance. Ms. Randolph had a concern about

section 5.12 she has it crossed out. We are deleting the entire section as per Mr. O'Connor's comment. Make it final. Send to Mr. Lavery for advisement. Mr. DeCarolis expressed his concerns about the front yard setbacks at 200'. Mr. Desiderio has stated that you need to come before the zoning board to meet those. They are making this generic. A lot of homes sit on 3 acres and anyone who doesn't meet the setbacks, you will have to go to the zoning board. Mr. Golden is concerned about negative and positive criteria. Mr. DeCarolis would like to amend the ordinance to read 100' from the front of the house to avoid a quantity of residents coming before the zoning board. Mr. Calcagne agrees with Mr. DeCarolis as far as making the resident go before the zoning board unnecessarily. Discussion in the AR1 & AR2 zones with many concerns with the setbacks. Mr. DeCarolis is concerned that the boilers are too close to the house. Mr. DeCarolis made a motion to amend the front setback to 100' and was seconded by Mr. Young. Mrs. Eitner asked what would be the size of acreage. Side and rear will remain 200' – change only the front to the 100' setback. Roll call vote: Mr. DeCarolis, yes – Mr. Calcagne, yes – Mr. Corvino, yes – Mr. Desiderio, no – Mrs. Eitner, no – Ms. Randolph, yes - Mr. Simonetti, yes – Mr. Young, yes – Mr. Bailey, yes – Mr. Zilberfarb, no. Mr. Golden reiterated what is being removed and or changed. He will forward to the board after his revisions. Still hashing out the ordinance thru discussion about 5.5 – Mr. Desiderio is stating if we are worried about the property line, why is there a concern where the houses are. Mr. Golden suggests removing the sentence about the 200'. You still need to show both the Construction Official and the Zoning Officer on a drawn plan, as to where you are locating the boiler on your property. Mr. Desiderio would like to motion to strike 5.5 (the wording of from.....and those located within 200' to the period) seconded by Mrs. Eitner. Roll call vote: Mr. DeCarolis, yes – Mr. Calcagne, yes - Mr. Corvino, yes – Mr. Desiderio, yes – Mrs. Eitner, yes - Ms. Randolph, yes – Mr. Simonetti, yes - Mr. Young, yes – Mr. Zilberfarb, yes & Mr. Bailey, yes. Mr. DeCarolis has a question about the dates - April to October. There is no one to police within those dates. Mr. Bailey requested this get to the township committee by March 9<sup>th</sup>. Mr. Desiderio made a motion to approve this ordinance & have Mr. Golden make the appropriate changes and forward this up to the Township Committee and was seconded by (unable to hear the tape) All in favor “**AYE**” none opposed.

### ***Route 94 Zoning***

Carried over to Executive Session

### ***Wind Energy Ordinance***

Ms. Randolph has a version that Mr. Golden worked on since the last meeting, & made the changes we noted on page 3, number 4C, to change the height to 200' for which the board decided on and approved. Letter D, he did take the extra wording out about fencing. The only thing that needs to be decide on the letter B – question for the board attorney. Ms. Randolph had a question about the statute in references to limitations and hindrances that is greater than 150% system height. We now have 400' back from the street right of way. Do we leave it at 400' or do we change it to reflect the statute of 300'. Mr. Lavery noted that the statute clearly states that it's a 150% from the setback which include from the front yard. You cannot restrict it beyond the 150% which is 300'. After further discussion, Mr. Lavery gave his input and believes it's ok to

go with the 400'. Structures are not allowed in the front yard. If they can prove that is the only place they can put it, and the zoning board agrees, they will have to approve those setbacks. Mr. Lavery suggests that Mr. Golden clarify they are NOT permitted in the front yard unless they are a minimum of 400' setbacks. Mr. Calcagne did state that was a concern. Mr. Golden read it to be clear, and will be sent to Mr. Lavery and must meet the township committee meeting agenda deadline for March 9<sup>th</sup>. Mr. DeCarolis has a question & addressed on page 3, number 4 (scenic vista) - Ms. Randolph made a motion to change the wording as read by Mr. Golden, and was seconded by Mr. DeCarolis. All in favor "AYE, none opposed.

A discussion about negative criteria and the term in the Master Plan were concerns. Mr. Bailey made it appoint to change – now is the time. Concerns of a ridge line & vista were discussed. Ms. Jay stated that in your ERI, scenic graphics were very generic and very broad stream. Mr. DeCarolis made a motion to take the letter N out of the number 4 and its' entirety and was seconded by Mr. Calcagne. Roll Call vote: Mr. DeCarolis, yes – Mr. Calcagne, yes - Mr. Corvino, yes – Mr. Desiderio, yes – Mrs. Eitner, yes, - Ms. Randolph, yes – Mr. Simonetti, yes – Mr. Young, yes – Mr. Zilberfarb, yes – Mr. Bailey, yes.

Mrs. Eitner asked if we can make a note when we redo the master plan to add those two items the definitions of the ridges and vistas so we don't have to go into this again. Ms. Jay stated elevations would be on the topography map. The board questions on how you would define the ridges and vistas. Mr. Golden stated that it's a matter of what other committees you would trust to make the determination. What do you want to protect in the town? Mr. Desiderio stated about how he has a problem of placing it in the front yard without going in front of zoning. The vote was 2 to 7 (7 to ok it). The board declines to revote on that tonight. Mr. Desiderio made a motion for Mr. Golden to make those changes as noted and send it to Mr. Lavery, then onto Brenda for the township committee's approval and was seconded by Mr. Young. All in favor "AYE"- none opposed.

### ***Solar Ordinance***

Ms. Randolph stated that she was going to printout the abandonment only section for Rita to send to Brenda for the township committee with a memo, but was unable to do so because Brenda doesn't have the word document. Mr. Golden was able to include that section into the ordinance that went to the township committee and at the same time (Mr. Lavery needs to clarify) he removed the \* asterisk and the wording afterward it that the township committee approved in December to remove. So when they get this Solar Ordinance, it will include the abandonment section that was inadvertently left out, as well as the removal of the wording that the township committee approved to remove in December. They are going to have to re-advertise, because that wording wasn't taken out after the asterisk, and were holding out to re-advertise because of the abandonment section. Mr. Lavery asked if they ever adopted the other one. Mr. Lavery stated to clean it up you would just say "section blank is amended to include the abandonment section, and section is to include the words "to remove". The paragraph after the asterisk was inadvertently advertised with it; therefore, it has to be re-advertised. The discussion is to re-advertise as per town committee to hold this for 60 days. It was noted that Mr. Durling is doing research & the township may change the language about the abandonment and also the disposal of it has to be put in there. Ms. Randolph stated that was up to the property owner and it was inclusive in the abandonment section; however, Mr. DeCarolis disagrees due to the hazardous waste. It's not going to get past the Mayor who also spoke at the Environmental

Board. That language has to be in there whether it's one paragraph – it has to be an approved disposal facility for these solar panels. Ms. Randolph had concerns about a farmer abandonment of their batteries when they come out of their tractors. The Ordinance never got sent back to the board. Mr. Desiderio made a motion to send a letter back up to the township committee stating that the board would like this to be done, since these were voted on Thursday. Mr. Golden indicated that the disposal is regulated by someone other than the township, such as asbestos. If removed by the owner, a demolition permit shall be obtained and the facility shall be removed. Mr. DeCarolis stated it should be done by a certified recycling facility. Mr. Lavery attested that it should read that it should be disposed of in accordance with DEP guidelines. Mr. Golden will forward the file to Mr. Lavery – for the record, N1 totally revised and we are adding section 10 – the only thing to mention, you have to renumber. Section 12 is violations. Section 12 becomes section 13; bumps up the numbers by one. Mr. Young made a motion to add the necessary items discussed and send it up to the township committee for final approval and seconded by Mr. Desiderio. The board is sending up the new version which includes the corrections and changes of the existing ordinance. It will be revisited at a later date due to re-advertising. Roll call: Mr. DeCarolis, yes – Mr. Calcagne, yes – Mr. Corvino, yes, - Mr. Desiderio, yes - Mrs. Eitner, yes - Ms. Randolph, yes - Mr. Simonetti, yes - Mr. Young, yes - Mr. Zilberfarb, yes – Mr. Bailey, yes.

## **EXECUTIVE SESSION**

A motion was made by Mr. DeCarolis and was seconded by Mr. Young to go into executive session. All in favor “AYE.”

The reason for executive session was to discuss an attorney/ client privilege of the Ridge & Valley Charter School and pending litigation of the Route 94 Zoning proposal. No official action taken at this time.

## **SUBCOMMITTEE / LIAISON REPORTS**

- a. Open Space – nothing to report
- b. Environmental – Mr. Simonetti stated they elected a new Chair Person, Maureen Cullen. There will be a joint meeting with Blairstown on March 16, 2011 at 7:30 pm.
- c. Site Committee – nothing to report
- d. Rural Character – nothing to report
- e. Farmland – Mr. Young is looking for new applicants and soon to have a joint meeting.

## **PUBLIC COMMENT**

Fran had concerns about variances and the cost of them.

## **ADJOURNMENT**

Mr. DeCarolis made a motion to adjourn and was seconded by Mr. Calcagne at 9:05pm.

Respectfully submitted

Rita Bernstein, Secretary