

**MINUTES
TOWNSHIP OF FRELINGHUYSEN PLANNING BOARD
WORK SESSION MEETING**

March 3, 2011

(Meeting Start Time: 7:30 p.m. No New Testimony after 10:30 p.m.)

CALL TO ORDER – The March 3, 2011, Work Session Meeting of the Township of Frelinghuysen Planning Board was called to Order at 7:38 pm.

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	R Barrow	A DeCarolis	C Calcagne	D Eitner
F Desiderio	R Randolph	J Simonetti	R Young	

R Corvino - absent
D Zilberfarb – absent/excused

Professionals present:

D Jay, Planner J Golden, Engineer

CORRESPONDENCE

A memo from Dick O'Connor, Construction Official was received offering comments to the Draft Outdoor Boiler Ordinance. Also included was a letter from NJ Department of Community Affairs and the Outdoor Wood Boiler Construction Code Permit Notice and Acknowledgement Form. Mr. Desiderio liked the comments that Mr. O'Connor put together, especially to include the DEP requirements. He believes that should all be part of the package. A brief discussion about the smoke emissions was noted. Mr. Golden also commented on Mr. O'Connor's notes. Mr. Golden also mentioned the setbacks refer to state and DEP requirements as stated in NJ 727-3. Mr. Barrow spoke of his concerns pertaining to regulating the stack heights and other issues, which will be discussed further under Ordinances.

Mr. Simonetti signed the acknowledgement receipt for Land Use Ordinance Book was given to the Township Clerk as required.

COAH Monitoring – it was requested by the board to send a letter to the Township Clerk requesting this be placed on their March 16th Township Meeting Agenda for discussion and to ask what the "COAH" monitoring monies are. Deadline for the proposal is April 15, 2011. Ms. Jay had stressed the 3 main consequences of COAH monitoring application and what can happen to the municipality if they should decide not to comply. Ms. Jay indicated that they were extreme, and that she couldn't guarantee what could happen. She explained what COAH Monitoring entails. Ms. Jay stated that it depends on authorization and access into the forms mode of the computer system. In addition, whether the information is correct in the system or if she has to make necessary changes, additions and deletions to these forms. General information needs to be verified by the municipal housing liaison and the potential penalties that can incur on this township. Ms. Jay said the deadline passed; however, they are allowing extensions up to April 15, 2011. Ms Jay stressed that the Planning Board pushed to get their certification and that it would be most beneficial to this board if she continues to work on the mechanisms and how they apply. Ms. Jay said she didn't know how much time and cost she would expend on this project; however, there is a COAH trust fund account monies that we can use up to 20% for administrative work, for which the Planner fees would fall under. Ms. Jay quoted approximately \$2,500.00 or \$2,600.00 to complete this task. The board, at this time, has no indication as to the amount of monies in this trust area and that they feel it is necessary to include that in the town's budget process. Mr. Bailey feels this falls under the Township jurisdiction and that the township committee will decide to use the COAH funds. Mr. Desiderio feels we should send an explanation along with her proposal to the Township Committee. Ms. Jay indicated that her proposal and all the information was forwarded to Brenda. The board felt that we should send a note to Brenda asking her to keep us in the loop as to their intentions with COAH Monitoring.

MINUTES

The **CORRECTIONS** to the February 7, 2011 minutes were noted and are as follows:

1. Mr. Desiderio has a correction on page 3 – where the solar panel ordinance is presumed to say: “was to be taken out” and the last sentence to be removed. It was noted the only thing that came out was the actual picture of the asterisk *. The last paragraph was presumed to come out – it was inadvertently left prior to advertising.
2. Mr. Desiderio corrected: he contacted the clerk (was and by would be removed)
3. Mr. DeCarolis pointed out that all the wording in the entire sentence gets struck – taken out.
4. Mr. Desiderio stated on page 4, bottom of the first paragraph, Mr. Durling asked if this “was” going to be an ordinance to stop a neighbor.
5. Mr. Barrow has some corrections – he suggests on page 4, the 2nd paragraph pertaining to the outdoor wood boilers – he would like the 2nd sentence to say “these emissions are dangerous because of the unique burning characteristics of the outdoor wood burners” and a sentence pretty far down about the air quality hotline. He wants to say “their characterization is that most complaint calls they receive come down to bad blood between neighbors” – that’s all.
6. Mr. DeCarolis stated on the 2nd page – to correct the spelling of Mr. Bailey’s name – include the “e”.

Mr. Desiderio made a motion to approve as corrected these minutes of February 7, 2011 and was seconded by Mr. Barrow – all in favor “**AYE**” – none opposed. Mrs. Eitner, abstained.

DEEDS

NW Properties, LLC – Block 1201, Lots 17.26 & 17.27 and the remainder of Lot 17.06 (Dark Moon)

A letter is to be drafted (with the assistance of Mrs. Drylie) requesting the replenishment of escrow back up to 100% so that all the professional services vouchers get paid prior to the signing of these deeds. Mr. Golden has sent out the amended deeds and indicated they can be approved & signed on Monday if all agrees. He was waiting for the Board Attorney to make sure they met the deadline – pending counsel advice. There was no zoning affected. This had been held up due to the replenishment of the escrow account; however, some of the monies have been eaten up and that NW Properties would have to replenish up to 100% prior to signing of these deeds. A letter was sent to them requesting them to replenish escrow. The Board Chair stated to the professionals that all their vouchers for payment need to be sent in as soon as possible.

Ridge & Valley Charter School

Mrs. Drylie spoke to the Board Attorney and he stressed that he believes this is an escrow issue and that the board was advised to go into Executive Session at Monday’s meeting.

RESOLUTIONS

There were no Resolutions for Signature at this meeting.

ORDINANCE(S)

Route 94 Zoning

Mr. Zilberfarb has provided the board with his Final sub-committee report for Route 94 Zoning with changes & final amendments. Mr. Desiderio requested to speak on his behalf. The subcommittee did some revisions. Mr. DeCarolis stated that if the professionals agree with their findings, he believes we should move forward. Mr. Desiderio made a motion for this to become an Ordinance and was seconded by Mr. DeCarolis. A lengthy conversation was about understanding on the setbacks and how they will affect deemed neighborhood commercial properties. An inquiry was made as to the properties located on 94 from Muller Rd to Kerrs Corner Rd. A debate about the acreage and coming to the board for a variance was also disputed. There was interest with regards of what impact this has for the character of the town. A member felt that the master plan should probably be re-examined as far as character and different zones. Conversation about architectural guidelines was also discussed. It was in the opinion of a few members that this Ordinance should be taken home, read and have enough time to digest it.

The professionals should take a look at this and make any recommendations at the Monday's meeting. The motion was rescinded. Mr. Barrow suggested that the Board Planner take the opportunity to look over this. It was agreed by Mrs. Randolph that this should be reviewed. At this point, Mr. Bailey has asked for a motion to send this to Ms. Jay for review and hash it all out at Monday's meeting just to be sure everything is covered. Ms. Jay quoted it would probably take her about 3 hours to complete this task and bring forward to the Monday's meeting.

Ms. Randolph made a motion for the professionals to review this and bring findings to the next meeting (March 7) and was seconded by Mr. Desiderio. **Roll Call:** Mr. Barrow, Mr. DeCarolis, Mr. Calcagne, Mr. Desiderio, Ms. Eitner, Ms. Randolph, Mr. Simonetti, Mr. Young & Mr. Bailey all were **"YES"** – none opposed.

Wind Energy Ordinance

Ms. Randolph provided the board with Chapter 244 for which discussion were concerns for setback requirements and Township Zoning. Further discussion had determined that the Board's Attorney would need to provide some direction and clarification on the wind turbine. Joe's latest draft was presented & handed out and the current statute information enacted by two houses in Trenton last January 16th. Ms. Randolph pointed out on the front page talking about unreasonable limits or hindrances for small wind energy systems that need to be included, specifically, the maximum height as well as setbacks. In the current draft Mr. Golden provided for the Ordinance states Item 4(a) talks about setbacks – 125% of the height – (b) talks about setback in the front yard – min of 400' from the street of the right away. Calculations were discussed and figures were noted. It was the board's decision to concur with the height of 200' maximum at the tallest point with regard to FAA requirements. A motion was made by Mr. Barrow and seconded by Ms. Randolph – all in favor **"AYE"** none opposed.

Mr. Desiderio made a motion to question as to whether this would be allowed on school property and to remove letter (E) so that the school would have to come before the board for a variance. The Board voted. Roll Call: Mr. Desiderio, Mr. DeCarolis, Mr. Calcagne, Mr. Barrow, Mr. Simonetti, Mr. Young and Mr. Bailey – **"YES"**. Ms. Eitner & Ms. Randolph **abstained**.

A discussion as to whether to allow this structure in the front yard and application for approval would have to go before the Zoning Board of Adjustment. Mr. Desiderio made a motion and was seconded by Mrs. Eitner. A Roll Call was taken. Mr. Barrow, Mr. DeCarolis, Mr. Calcagne, Ms. Randolph, Mr. Simonetti, Mr. Young and Mr. Bailey **"NO"**. Mr. Desiderio and Mrs. Eitner- **"YES"**. The board decided to seek concurrence from the board attorney, Mr. Lavery, and to address set back issues at the March 7, 2011 meeting.

Solar Panel Ordinance

Ms. Randolph had indicated that there was a missing paragraph to the "Abandonment" Section of the Ordinance. She also stressed that there should be guidelines as to taking it down, moving it etc. Ms. Randolph suggested we write a letter to the township committee letting them know that it was inadvertently left out along with a copy of the abandonment section. Mr. DeCarolis said that the township committee is aware of that and it will be incorporated prior to advertising. A brief discussion also arose about the power and fire, the backup systems and killing the power. Ms. Randolph said she can type up the section that was missing and forward it to the town committee. Mr. Desiderio made the motion for make the corrections, additions & amendments and forward to the Township Committee and was seconded by Ms. Randolph. All in favor **"AYE"**, none opposed.

Outdoor Wood Burning Boilers

An ordinance from Independence Township was provided by Shannon which was simply written by their Zoning code Official and was the process of being adopted.

Ms. Randolph was concerned about the limits of stack heights. Mr. Golden had a draft for any comments from the last meeting – everyone was to comment and get it back to Mr. Golden. Mr. Golden noted that the intent over the last month was for everyone to look over the ordinance and give their opinions about the stack heights from existing dwellings etc. Mr. Golden told everyone to make their comments and forward them. Mr. O'Conner did forward his comments and Mr. Golden highly recommended them. Mr. Bailey's personal opinion was to stick to the manufacture recommendations, to keep it within those regulations. If you start feeling that the board wishes to change certain height requirements etc, you will then get into engineering fees, inspection ordinances and other provisions. The construction official will go out to do his initial install inspection. Comments were: Leaving it up to the owner as to complying with the manufacturer specifications, to scratch the section on the 3 acre lots, scratch out section 5.1 and the second part of 5.4 and the other change was to add the words to say "actual burner"....anybody with any acreage can place these (which is the last sentence of 5.4) the zoning administrator.....all scratched from that sentence down. On 5.4 added the word 500' (five hundred feet) of the proposed outdoor wood fired boiler. Mr. Golden reviewed all the comments of Dick O'Connor's and thought they were good. Mr. Barrow questioned the stack heights and the installations. He provided a tremendous amount of information from the model ordinance & thought 15' from the ground is an ideal stack height. Mr. Barrow noted that he is aware there are stacks installed in excess of 15'.

He knows the illustrations may indicate higher than 15' & questioned peak heights. He's uncertain that the 15' is a standard height. Mrs. Drylie commented that whatever the manufacturers' specifications during installation and permit process thru the building dept is what the Construction Official inspects. Mrs. Drylie also stated that you cannot alter those specifications and you cannot make the resident go further to pay for engineering and any other requirements. All the sub code officials go out and inspect this according to the manufacturers' specifications. The construction official is not the enforcing agent on this. The DEP is the enforcing agency. Mrs. Drylie felt that you can regulate the 300' which is reasonable. The board chair stated that we need to get this on the books and maybe go back and revisit at a later date as the regulations may change anyway. There was a potential motion to eliminate the now last sentence of paragraph 5.4. Do we leave it at 15' or do you want to scratch paragraph 5.4 all together? Mr. Barrow is still concerned why the manufacturer is self policing? Mrs. Drylie disagreed that we have to go by the manufacturer's specifications – the construction official has to follow the UCC (Uniform Construction Code). She is reminding the board that this was being worked on for 4 years due to one resident placing in front of the house. She feels that you all are beating this with a dead horse. You are putting a stress on the residence. Balancing the stack height and the 300' setback is reasonable, as per Mr. Golden. You are protecting your residents. She stated you'll need a "full time zoning officer" especially during the times the calls come in. The proper authority is the DEP. Alan asked about the piping and the measurement of the piping. Mrs. Drylie noted Mr. Barrow's frustration; however, the DEP must enforce. We have a part time Zoning Official. Mr. Barrow happens to disagree with the Construction Official. Mr. Golden said you can regulate proximity from the property line and believes 300' is a reasonable setback. Going back to 5.4 – either leave in sentence one (1) and eliminate the rest OR eliminate it completely including sentence 1. The motion should only talk about the first sentence. A motion to take all of 5.4 out was made by Mr. Desiderio. Mr. DeCarolis questioned the piping. Discussion about the piping was noted. Mr. Desiderio said to leave the 15' and strike the rest. Mr. Desiderio made the motion to leave it at 15' and was seconded by Mr. DeCarolis. Mr. Bailey clarified so you're keeping the 15' so paragraph 5.4 will be nothing but the first sentence. All in favor "AYE" – none opposed.

Mr. Desiderio wanted to go to section 5.5 with all of Dick O'Connor's entire package sections 5.5, 5.6, 5.8, 5.11, 5.12, & 7.1 and made a motion to include this entire package with the DCA letter and Permit Acknowledgement Form to ensure the owner will remain liable for future fines with the DEP. Every person must sign that. Mrs. Eitner seconded that motion. All in favor "AYE" - none opposed.

Mr. Desiderio made a motion that he would like this to be drafted up and sent to the township committee. Mr. Barrow would like to suggest to insert the recommendations of using Phase II burners or better, a cleaner burner, adding the definition of the model ordinance (phase 2 or greater). Mr. Desiderio made the motion and was seconded by Mrs. Eitner to include 'PHASE II OR GREATER'. All in favor "AYE" – Mrs. Randolph, opposed.

Mr. Golden would like to suggest editing section 5.2 to include that language of what you can burn. The ordinance says you can only burn seasoned wood or other solid fuel as per definitions 4.1 (2) other solid fuel.

Mr. Desiderio made a motion that Mr. Golden make the corrections and forward to the township committee for their review. Mr. Golden has a question about the enforcement and fines. Things were skated over and should go back and review. Section 7 was pulled out of a model. Who enforces these fines for the measurement of smoke, or any violation? The zoning official enforces the ordinances. Mr. Barrow noticed 5.2 would suggest 300' from ALL property lines and none within the front yard. Mr. Barrow would like to vote on this. Mr. Barrow wants to make a motion to say 300' from ALL property lines. This could be placed directly in the back of the house. A discussion was made on limiting and discriminating property owners. Mr. Golden suggested 200' or 500' from an existing home. Mr. Calcagne described losing value of the properties. Mr. Young would like to make a motion to make it **200' from ALL** property lines for the setback. This will not keep anyone from coming in and being notified. A motion was made by Mr. Young and seconded by Mr. Desiderio to make the set back requirements to read 200' from **ALL** property lines. A Roll Call was taken: Mr. Barrow & Mr. DeCarolis "NO". Mrs. Eitner, Mr. Desiderio, Ms. Randolph, Mr. Young, Mr. Simonetti, Mr. Calcagne, Mr. Bailey- "YES".

As per Mr. Bailey, this will be sent up to Township Committee for their approval or disapproval for final. The board should send their recommendations. Mr. Desiderio made a motion to have Mr. Golden revise and bring it back to Monday's meeting and was seconded by Ms. Randolph. All in favor "AYE" – none opposed.

Mr. DeCarolis wanted the board secretary to send a letter up to the Township Committee for them to add to their meeting agenda for their meeting. Include Outdoor Wood Boiler and Wind Ordinances also. Rita will be out of town. Frank will speak to Brenda and Kevin will call Brenda to make sure these make the township committee agenda for discussion.

Non-Conforming

The Board decided to seek advice from the attorney and to table this for discussion at March 7, 2011 Meeting.

NEW BUSINESS

The board Chair and secretary have been going over the vouchers.

PUBLIC COMMENT

Open to public at 10:07pm and closed. Mr. DeCarolis suggested that if the gentlemen in the audience have something to say, let them make their statement. There was no public comment at this time.

ADJOURNMENT

A motion was made to adjourn this meeting by Mr. Barrow, and was seconded by Chris Calcagne. All in favor “**AYE**” – none opposed. This meeting was adjourned at 10:25pm.

Respectfully submitted,

Rita Bernstein
Secretary