



BEAR CREEK TOWNSHIP

PLANNING BOARD

Chairman

Joseph Yenchik

Vice Chairman

Anthony Ciliberto

Board Members

Richard Kresge, Jr.

Michael Parri

Ed Benkoski

February 20, 2006 Planning Board Meeting Minutes

The meeting began at 7:05 pm and all Board Members were present.

The January 16, 2006 meeting minutes were approved with a motion by Ed Benkoski, and a second by Tony Ciliberto. All Board members were in favor.

The February 6, 2006 meeting minutes were approved with a motion by Tony Ciliberto, and a second by Mike Parri. Ed Benkoski voted to not approve the minutes.

The board held its reorganization session. A motion was made by Tony Ciliberto to retain Joe Yenchik as Chairman; Mike Parri provided a second. A motion was made by Joe Yenchik to nominate Tony Ciliberto as Vice Chairman; Mike Parri provided a second. Ed Benkoski abstained from both motions.

Agenda Item: Haus/English Subdivision

Jason Moran from Borton & Lawson was in attendance representing this agenda item.

Jason Moran explained that Haus/English would like to satisfy a lot line adjustment, very little of which is located in Bear Creek Township. The encroachment has been in existence for 20 years. ¼ acre will go to Haus and ¼ acre will go to English. There is existing access on both lots. Lot #2 will remain the same. Jack Varaly noted that this approach seems reasonable.

Joe Yenchik requested that legal descriptions of the property be provided with the map. Joe Yenchik made a motion to accept the plan; Rich Kresge provided a second. All Board members were in agreement and approved the subdivision. The Chairman and Secretary signed the maps at the meeting.

Agenda Item: Energy Unlimited, Inc. – Penobscot Wind Farm

Attorney Preate asked Bob White to list the 9 conditions provided in the 2003 letter and how EUI met each item:

1. Closed boundary survey – Drawing C on latest map (12-22-05). 9/05 maps did not contain this information.
2. Dimensions of turbines – Drawing C-1.1 (Nolan & Gruver properties were omitted from map.) Joe Yenchik was concerned as to why the wind turbine was removed from the Hutter property. Additionally, the Gruver property is larger than what is shown on the map. Rich Kresge asked if

the Sullivan Estates subdivision was noted on the map. David Lamm said it was not but that Mr. Nolan is well aware of the wind farm project. Rich Kresge felt a seller's agreement should be incorporated into the Sullivan Estates property. Bill Vinsko asked if the surrounding landowners were notified of this project. Ed Benkoski stated he would provide a copy of this notice.

3. Access road geometry – Drawing C-2.1-C-4.1
4. Copies of Highway Occupancy Permits – Blossom Drive & Waltz Lea have been secured. PP&L road will not be an access for the project.
5. Gates on roads – detail provided on map of gates to be placed on project.
6. No structure closer than 1,500 feet - Noted with circles on map- closest house over 1,600 ft away.
7. Wetlands delineation completed
8. Approval from other agencies –
 - a. MPDES Permit secured
 - b. Cultural Resource notice – PPC plan
 - c. Bat Survey
 - d. PNDE search – scrub oak identified and avoided
 - e. Timber rattle snake survey
 - f. FAA approval
9. Bonding – same bonding will be secured as was required for Bald Mountain Wind Farm project. (Board would also like a decommissioning bond secured – EUI was in agreement with this.)

Joe Yenchik noted that the Luzerne County comments are referencing the original map submitted in 2003 not that submitted 12/05. David Lamm noted that in 2003 the wetlands were not delineated. A discussion between the Board and EUI representatives began regarding the studies conducted; the dates the studies were completed and (if necessary) what maps were used as a basis of each study. Mike Parri was very concerned that the correct maps were not used in these studies since they were just finalized in 12/05. Bob White explained that the maps were complete and the revision dates are due to minor changes on the map.

Walter Poplawski explained that the map provided to the Planning Board in 2003 was not the same map provided to the Supervisors that same year. The Planning Board received a concept plan and the Supervisors approved a map with more detail. Joe Yenchik asked who approved the wetlands piece of the project prior to the Supervisor approval. No answer was provided. Mr. Lamm stated that all of the refinements approved by the Supervisors were in response to the conditions set by the Planning Board.

Mike Parri noted that the conditional letter also asked EUI to come back to the Planning Board when other conditions may be imposed. The letter did specifically note 9 conditions but the letter was very clear. The original plan provided did not have enough information to generate more conditions at that time.

David Lamm indicated that there was no bad faith on the part of EUI. They wanted to make a better map before coming back to the Planning Board. We should have come back to the Planning Board but we did meet the conditions. Mike Parri stated they might feel they met the conditions but EUI also made additional changes. David Lamm does not feel that EUI made major changes only refinements. Developers do research prior to spending a lot of money to avoid bankruptcy.

Joe Yenchik asked why the substation was originally placed in wetlands. David Lamm stated the substation was moved because PP&L would not allow it in that location.

Joe Yenchik also expressed concern over the addition of a 800 foot road to a DDT tower that EUI has now said will not be necessary. Joe Yenchik would like to see this road delineated on the map. David Lamm said there is not reason to put this road on the map because it will not be used. In addition, Mr. Lamm stated that it is not legal standard to call this a change.

Attorney Vinsko reminded the EUI representatives that it is to the discretion of the Planning Board as to whether or not these changes are significant. He also reminded them that we all agreed there were

changes from the original plan. If the original map was revised the Board has discretion to deem the plan as they wish.

David Lamm stated that this is not a revised plan that was submitted. Atty. Vinsko noted that there are voluntary changes to the map in addition to the 9 conditions requested. Atty. Preate stated the changes were as a result of the conditions imposed on the original map – Atty. Vinsko disagreed. Attny. Vinsko stated that EUI has made strides but the PP&L change is outside of the 9 conditions. Attny. Preate stated that this has not changed the character of the project.

A discussion began between Attny. Vinsko and EUI as to whether the Board has the authority to review the map. EUI does not feel that the regulation in the BCT code applies to their situation. They feel “revised” does not apply to land development. Jack Varaly stated that land development in the BCT ordinance is interchangeable with subdivision and is explained in the definitions. Attny. Vinsko also noted a 2002 case that ruled dominium changes are acceptable but that substantial changes should constitute a new submission. In addition, there was a ruling in 9/2005 that stated it is the good faith duty of the developer to give the Planning Board the opportunity to make determination on changes outside of the conditions. David Lamm stated that they did not realize the impact and that they received a promise from BCT.

Joe Yenchik added that the new roads (50 x 100 ft. item) and additional property (Fedak) were EUI changes and not a result of the 9 conditions. A variance may be needed on the additional property.

Attny. Vinsko explained to EUI that the Planning Board is looking to add additional conditions due to the changes that have been made outside of the originally requested one. Attny. Preate stated that the basis of the plan has not changed. In addition, legal action will be taken if this is not approved.

David Lamm stated that he did not realize these changes would deem the plan a new submission. He would like to work this out. Attny. Vinsko explained to Mr. Lamm that BCT is not out to hinder this project, however, the Board will be setting a precedence and he would like to advise them accordingly. The BCT Planning Board has not promised you anything and has not approved this project.

A brief executive session was held with the Board, Attny. Vinsko and Jack Varaly. After the session Attny. Vinsko indicated that in light of litigation everyone agrees this is an important project. The BCT Planning Board wants to ensure that this is the best possible project that can be developed.

The BCT Planning Board would like to propose that EUI allows the Board to have an executive session within the next 7-10 days to review the changes and impose additional requests for this project. EUI took 2 years to come back to the Board with this project and provided the Board 60 days to review the project. BCT feels this is a reasonable request to make.

After some concern, EUI agreed to the April 30, 2006 (60 day) extension of time for both BCT Boards and will submit the most recent map to Luzerne County for additional review. In response, the BCT Planning Board will meet to provide additional requests and conditions to the changes on the map.

A vote will need to be taken at the April 30, 2006 meeting. A motion was made by Joe Yenchik to extend the timing of the vote until April 30, 2006; Ed Benkoski provided a second. Rich Kresge abstained – all other Board members were in agreement and approved the extension of time for the Penobscot Wind Farm.

A motion was made by Joe Yenchik to close the Planning Board meeting, seconded by Rich Kresge. All were in favor.

The meeting closed at 10:25 pm.