

**KINGWOOD TOWNSHIP
BOARD OF ADJUSTMENT**

**July 10, 2013
MINUTES
7:30 PM**

M.L. Haring, chairperson, called the meeting to order, at 7:30 pm.

PRESENT:

D. Hewitt	L. Frank
M.L.Haring	D. Pierce, Atty
J. Laudenschach	A. Planer, alt
B. Wilson, Sec	T. Ciacciarelli
T. Decker, Eng	C. McBride
P. Stepanovsky	C. McGroarty, PP

ABSENT:

None

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.

The 48 hour requirements of the Sunshine Law have been met. Notice of this hearing has been advertised in the Democrat. Copies of this notice were posted in the Kingwood Township Municipal Building and filed with the Municipal Clerk. The Board of Adjustment proceedings close at 10:30 pm.

MINUTES:

M.L. Haring stated that the typographical errors in the minutes have been corrected. Are there any additions or corrections to the content of the minutes. C. McBride made a motion to approve the June 12, 2013 minutes, seconded by T. Ciacciarelli. On roll call to vote.

**Aye: L. Frank, C. McBride, J. Laudenschach, D. Hewitt, P. Stepanovsky,
T. Ciacciarelli, M.L. Haring**

Abstain: None

Absent: None

RESOLUTION:

None

NEW BUSINESS:

Hearing: Continuation from the June 12, 2013 meeting.

Delaware River Tubing, Inc. BL 50, L 9 – C1, C2 and D1 Variances and Preliminary/Final Site Plan

1

Michael Hoffman, attorney appearing for the applicant, informed the Board that the last time they were here there was questioning of Mr. Troutman, traffic engineer. They had mentioned at that time that he had a pre-

planned vacation and they discussed it and it wasn't a situation since he had given live testimony that he could necessarily send somebody else and answer questions on testimony that they didn't give so it would necessarily go into the next meeting, so based on that he's going to present Mr. Bayer again for their engineering drawings that they had discussed with the Board and the revisions that they made to them. In the thumb drive that he gave to the Board this evening it contains all the prior Exhibits with the addition of several more. He noted that when Mr. Pierce looks at the Exhibit markings they re-submitted their various sheets to their engineering and were marked **A-2a, A-3a, A-4a and A-5a**. He also indicated on the narrative on the computer Rev 1 which means the first revision to the original set that was produced to the Board. He's going to have Mr. Bayer go through those sheets and advise the Board what revisions were made based on the last appearance and testimony.

Looking at **EXHIBIT A-2a – Sheet 1**- Mr. Bayer stated that the revision to this sheet is that they hide all of the on site topography and to the North American Vertical Datum 1988 (NAVD) and so the contours are now an NAVD 88. They did that so that they could identify the actual flood elevation on site. Previously on their original submission they included a Firmette that identified the Flood Hazard Area. Now with the new NAVD88 topo on site they can show the Flood Hazard Area. The Flood Hazard line is approximately 120 feet –121' and change is the Flood Elevation (here where's he's pointing his finger) -that elevation wraps around the existing pad and on out so the existing pad remains outside of the 100 year flood elevation. Previously the flood elevation line was shown to go just outside the wetlands, now it goes just outside the pad further to the south. They established the surface elevation of the concrete pad and confirmed that it's outside the 100 yr. Floodway. There are no other revisions to Sheet 1 other than two (2) notes that have been added - **#2 which states Vertical datum is NAVD 1988 and #3 which states 100 Year flood elevation has been interpolated from the FIRM map and is estimated to be 121.3'+/- at the southwest corner of the property.**

EXHIBIT A-3a -Sheet 2 - Mr. Bayer- this is the absolute proposed site plan and the revisions made to this sheet were as discussed with the Board last time. First, he added a note to the plan that says all surface treatments shall be grass unless otherwise noted. The only areas that will not be grass are the existing concrete pad, proposed landscape buffer area, the driveway, the now cinder walkway, they put the dump access and port a potty on the blacktop area. The next revision they made was to decrease the inner radii on the proposed driveway that would allow the buses to make the turn without extending over the edges of the driveway. They removed the proposed walkway along the outer radii, he says radii because it is a compound curve for the DOT manual, extended the proposed landscape buffer on three (3) sides now the western, southern and northern side of the now existing concrete pad. They also proposed a buffer between the ingress and egress and a small area of the landscape buffer between the ingress and the northern property line. The plantings, he went to the Native Species Society of New Jersey and changed the trees to Eastern Red Cedar (30) and Red Maple (29) and Leather leaf Viburnum (105)- Red Cedar and Red Maple a little bit shorter growing height-wise. The next revision was the removal of the middle size pad adjacent to the driveway and the smaller pad with lid is not a septic system it contains a well head inside (pit 3 ft. deep) and is not your typical well heads that they see anymore. This will be sealed by a licensed well driller who will fill it with cementatous grout. The trash and recycling dumpsters will be located on the existing concrete pad and at that location the pad is an inch or two above existing grade. What they propose is a blacktop apron matched to the grade of the concrete pad and the driveway elevation and that way the dumpsters could be rolled along there. They moved the portable toilets to the western side of that pad. That asphalt pad is also where they will locate an 8' wide swing gate that will provide access to the tube storage facility and the patrons will not be allowed onto the pad to take their tubes. They decide what tube they want and one of Mr. Crances employees will get it for them. The gate is located adjacent to the dumpsters- couple of reasons for that is to ease the flow up and over to the pad. The concrete pad on the northwestern edge is 3-1/2 to 4' above the existing grade. They have changed the walkways from mulch to cinder. He has also identified the trees that will be removed, three (3) of them indicated by an X – an 8"- 10" and 12". The location of the canopy where the employees are going to sit under has been moved to the west. Because they extended the buffer on the other two sides the large concrete

pad is going to be removed to provide a 15' setback from the property line on the southern side and the western side. Previously – the last submission was 10' but they've increased that to 15' and as a result the coverage

table has been modified. They removed the smaller of the two foundations, the small slab, but they have added the proposed blacktop apron. The net is still a reduction of over 33% of impervious coverage.

EXHIBIT A-4a – Sheet 3 - Mr. Bayer – this is a detail sheet and the modifications to this include the detail of the walkway, it now shows a cinder surface. Because they are going to need a DOT highway access permit, DOT does not like Belgian Block curbing so they've changed that to a poured concrete curb consistent with what the DOT would like. The other change is, and there's a note on the previous plan that he forgot to identify, they changed to a vertical wood stockade fence, 8' high, the swing gate he talked about is going to be stockade also. They went up to the existing facility and identified the size tubes by diameter. There are 50", 36", 44" and double tubes plus rafts (large and small), kayaks and canoes. The drawing shows how all are stored and a small area for deflating - deflated. They show just under 900 tubes, 100 kayaks, 18 canoes and 55 rafts. This is approximately 60% more square footage of storage area than what is currently being used at the roller rink. The tubes would be stacked 7 high at maximum, and the max would be 94" high. The stockade fence is 8' tall so it won't extend over the top of the stockade fence. Mr. Crance asked Mr. Bayer to find a camouflage netting that he could string across the top of the entire facility. Mr. Bayer found a camo pattern which is a Broad leaf Woodland which is consistent with one of the camo patterns and looked very natural. It's distributed by U.S. Netting, Inc. Another change on this plan is - he mentioned the dumpster and recycling container will be on the existing concrete pad and he proposed a block enclosure around that with a slide gate, so that they could be secured. The access to the tubes and dumpsters are capable of being padlocked.

EXHIBIT A-5a – Sheet 4 – Mr. Bayer – this is the Soil Erosion and Sediment Control Plan. The changes that he previously described to the site plan-landscape buffer, change in the driveway configuration have been changed on this plan also, but the only real change was the area of disturbance which is now 26,697 square feet, it was 27,000 square feet and change before. This is because they removed the 5' wide walking path on the outside of the driveway. That's the only change on Sheet 4 – EXHIBIT 5a.

Tom Decker- few questions, the revised landscaping- what size are the trees, there is no caliper or height.

Mr. Bayer- they will remain the same the tree height will be 6' minimum and the caliper isn't notated but it's a 6' foot height for both of the trees. (Eastern Red Cedar and Red Maple)

Tom Decker- the cinder path is that going to connect to the state path on the state property?

Mr. Bayer - he's assuming they'll get permission from DEP to connect them. He doesn't show that on the plan but previously it was presented in testimony that, that is being worked out with DEP.

Tom Decker – that hasn't been resolved?

Mr. Bayer- no, not to his knowledge.

Tom Decker – with regards to the layout for all the tubes, kayaks etc. if we could go to **EXHIBIT A-4a-Sheet 3**. The access looking at the plan on the lower right hand, how do you get to the 44" tubes if somebody wants one?

Mr. Bayer – you walk along the racks here or along the back.

Tom Decker – OK The kayak racks are 8' X 10' long. How are the kayaks stored on the racks.

Mr. Bayer- there are supports extending horizontally out from the center of the rack and the kayak is sitting on

Tom Decker – the kayaks are 8' to 10' long and he's been up to the site at the roller rink and they look like they go across, they straddle between the 8' lengths and if the 8' lengths are oriented the way they are – how do you get the kayaks? Do we need another man gate in there-someplace to get into?

Mr. Bayer – again looking at how they had it stored up there, he drew a nice pretty picture but in reality you have snaking through tubes here and there.

Tom Decker- the number of tubes being stored are 900?

Mr. Bayer- just under 900.

Tom Decker- at last months meeting there was testimony stating 1800 tubes.

Mr. Bayer- he told Mr. Crance that there's no way he could get 1800 tubes on that in an inflated condition.

Tom Decker- so where will the other 900 tubes be?

Mr. Bayer- they're deflated-there's a deflated tube storage area there that he believes will be able to hold the other 900. Deflated tubes are very small.

Tom Decker- this may be more of a question for Mr. Crance. During the course of a day would more than the tubes that are inflated be used?

Mr. Bayer- that's a question for Mr. Crance.

Tom Decker- he's looking at it in just the logistics of the storage in there it looks nice and neat but when you have the fence you have limited access to everything around it and it also relies on everybody storing those 900 tubes perfectly on top of each other and in an orderly manner, that was his question, otherwise they did make revisions to the plans that addressed concerns the Board had made, if they're to the Boards satisfaction that's something for the Board to discuss.

Mr. Hoffman- Mr. Crance is here and has been sworn previously, so if the Board would like to hear from him about egress and ingress and the machinations of dealing with the tubes.

M.L. Haring-that would be fine.

Mr. Hoffman- the question is the day to day operation, moving these tubes from inflated to deflated condition throughout the operation of the day presuming that you put more tubers in the water than the number of tubes that are inflated and depicted in the drawing.

Mr. Crance- Good Evening. Last time he stated there was 1800 tubes- that's total. He don't believe that 1800 tubes would ever go out all at once. A lot of the tubes would be re-used so you may only use 900 tubes. They're gonna have some tubes at the other locations still, so he don't know if they would have to inflate some more but they could possibly on a sold out day. Also, that's a very nice pretty picture but they wouldn't have to lay it out that way, they could put the large, medium and small in one area, leave an area to get to the canoes and kayaks and on any day once you move some of the equipment out from the front then you have a large open area to get around and it really won't look like that after a very short time frame it would be pretty wide open and very easy to get to the equipment.

Tom Decker- on your peak day how many patrons would you typically have?

4

Mr. Crance- on an absolute sold out peak day there might be 2,000 people but that wouldn't be 2,000 tubes, it roughly would be maybe 1500 tubes which almost double would be re-used or half of them would be re-used.

People that leave at nine (9) and come back at one (1) -those tubes would be re-used and of course your canoes, kayaks and rafts would take up about 500 of the clientele probably. Those are approximate numbers and a pretty close estimate. The heaviest tube could weigh anywhere from 2 lbs to 4 or 5 lbs. He's never weighed one.

A. Planer- you introduced something new this time and that's the camo tarp across the top- what's the plan for suspending that and how is that going to look from the road and from the path?

Mr. Bayer - it's gonna look like a tree canopy and drape over the stockade fence and there may be some middle support poles but it basically is going to cover up the tubes and primarily would create a less visual impact for properties across the street because there is a 20' elevation difference. Looking down on it you would see the camo instead of the tubes. The camo will be up all the time during the operation and will come down in the fall when the tubing season ends.

A. Planer- when the tubing season ends are all the tubes deflated - what will this diagram look like in the off season?

Mr. Bayer- the tubes are all deflated- there will be a concrete slab with a stockade fence around it.

Mr. Hoffman- he believes prior testimony was that outside of the season everything will be removed that is a non fixture including the tubes and that would include the camo tarping. Now if someone wants the camo tarping to stay on year round it's certainly something they could consider.

L. Frank – he thinks last month you (Mr. Crance) said you would be doing 70,000 clients a season. Is that right?

Mr. Bayer – I don't recall testifying to that.

Mr. Crance – he believes he said approximately 40,000 people

L. Frank- 40,000, so this is the amount of tubes you need to service 40,000 people a year.

Mr. Crance – rough numbers I was thinking if it's a 1,000 tubes-roughly 60,000-70,000 especially if you include rafts, canoes and kayaks maybe more.

L. Frank – what I'm getting at is what you have here would be the limit that could go through that facility in one season is 60,000 people.

Mr. Crance – roughly, but as of right now they've never done more than 40,000, maybe 45,000 people tops at a perfect season. They're looking at half that or two thirds this year.

L. Frank – alright, thanks.

C. McBride – the reference to the 70,000 is on the stenographers report page 65 - was not from the applicant.

M. L. Haring – are there any property owners within 200 ft. that have questions at this point.

Robert Fee – stated he owns the driveway and the roller rink has permission to use it, not the tubing business.

D. Pierce – there will be a time later in the proceedings to present testimony about the application, right now

it's questions for the applicants witness.

Robert Fee – that's the question , where's the permit?

Mr. Hoffman – not sure if he understands the questions nor does he think it's directed to the engineer.

M.L. Haring – David- who should that question be directed to?

David Pierce – Mr. Crance.

Mr. Hoffman – the question is where is the permit for the operation of the business at the roller rink?

David Pierce – he thinks that's a fair characterization of the question.

Mr. Hoffman – assuming a permit's required.

Mr. Crance – he doesn't know the exact details of what's required.

Michael PISAURO – represents Diana Evans who is a property owner within 200'. Mr. Crance do you know what the zoning is for the roller rink?

Mr. Hoffman – Madam chair can we stay with the engineer.

Michael PISAURO – okay-since Mr. Crance was testifying.

Michael PISAURO- if we could go to EXHIBIT-A3a- there is going to be a gate on the driveway to block access from Route 29 to the driveway on off hours- is that correct?

Mr. Bayer – yes, there's a gate on the ingress and a gate on the egress.

Michael PISAURO – how far is that gate from the Route 29 right of way?

Mr. Bayer – one (1) foot.

Michael PISAURO – is that in accordance with DOT regulations.

Mr. Bayer – it's on their property and will not make a visual – it's not in the site triangle.

Michael PISAURO - it's his understanding that DOT has a regulation requiring 50' from the right of way.

Mr. Bayer – do you have a citation.

Michael PISAURO – he's looking for that.

Mr. Bayer – the reason they proposed those gates were for security.

Michael PISAURO - **NJ16:47-3.5 subsection 11.**

Michael PISAURO – with the camouflage buffer he's not sure if he was clear and he apologizes if it's his mistake. Is that going to be permanently affixed or draped over?

Mr. Bayer – it will be draped over the fence during the season and will cover the tubes.

6

Michael PISAURO – it's going to be there during the day-during the evening- it's not going to be taken down during operations.

Mr. Bayer – not to his knowledge.

Michael PISAURO – **EXHIBIT A-4a**- the 8x14 racks -how tall are they or the 8x10 racks?

Mr. Bayer – 8'.

Michael PISAURO- and the fence is 9'.

Mr. Bayer – the fence is 8'.

Michael PISAURO- are there going to be canoes or kayaks on the top part of the rack?

Mr. Bayer – that's including the canoes or kayaks stored there.

Mr. Hoffman – so the height of the rack you just spoke in your testimony includes the canoe or kayak situated on the rack.

Mr. Bayer - correct.

Mr. Hoffman – to be more clear a complete set of canoes or kayaks situated on a rack to the top. (8')

Michael PISAURO – a few questions for Mr. Crance.

Mr. Hoffman – Madam Chair, if we could stay within the scope of Mr. Crance's testimony relative to the engineer.

M.L. Haring- with what the engineer and the site for right now.

M. L. Haring- do you have any questions for Mr. Crance?

Michael PISAURO – not directly related to what the engineer testified but to some questions that Mr. Crance did discuss or testimony he did give.

M.L. Haring – just now.

Michael PISAURO – do you know what the zoning is for the roller rink?

M.L. Haring – we're talking about the site right now. We're not doing off the site at this time.

Michael PISAURO- fair enough.

Michael PISAURO – have you calculated or tallied what you have done the year before or the year before that in providing that information to your experts; for example: how many people do you have a day, what days are your heaviest days.

Mr. Crance - yes, roughly we've gone over those numbers.

Michael PISAURO – so you have actual tally slips from what your sales were from last year.

Mr. Crance – he has everything with his accountant.

Michael PISAURO – and you have provided that to your experts.

Mr. Crance – he don't think he's provided every tally slip for every day.

Mr. Hoffman – he provided his experts a verbal account with documentation to show the number of patrons.

Mr. Crance- yes, that would be accurate.

Michael PISAURO – have you provided a breakdown of how many 50” tubes, 36” tubes, 44” tubes you use.

Mr. Crance – yes.

Michael PISAURO – and you provided how many kayaks and rafts you use.

Mr. Crance – yes, these are rough numbers we counted and I told them verbally.

Michael PISAURO – have you provided any information regarding what your season has been like, current, for this year.

Mr. Crance- not accurate numbers, no.

Michael PISAURO – but you have those numbers.

Mr. Crance – of course.

Michael PISAURO – Thank You.

Mr. Crance – this season has been less with the number of patrons mainly because of the rain.

M. L. Haring – are there any other questions.

Gary Search – and I do stand corrected on that tank, sorry about that. He has pictures of the place the way it was originally and the tank and the bathroom were on the other side.

Gary Search – he wanted to know about the trees so the leaves will go away in the fall, so it's gonna be all sticks and we will be seeing everything there.

Mr. Bayer – the Red Cedar is a pine type tree and will grow to 35'- 40' in height. The planting size will be 6' at planting.

Gary Search – how much does it grow per year?

Mr. Bayer – he doesn't know right off the top of his head.

Gary Search – you'll be cutting away more of the concrete in the back?

Mr. Bayer – that's correct.

Gary Search – you're still using chain link fence all around?

8

Mr. Bayer – we're using wood stockade fence now. The concrete pad elevation is approximately 121.4 and across the street is approximately 100 and 40 – 20' plus or minus.

Gary Search – at the beginning of the driveways?

Mr. Bayer – driving up the common drive the first driveway to the right, he got a shot right there at the dead center of the common drive..

Gary Search – that's halfway up but we still go a lot higher as you go on up.

Mr. Bayer – beyond that there are trees between that first house and Route 29. he didn't go any further up.

Mr. Hoffman – just to expand on that if you look at **EXHIBIT A-3 vs EXHIBIT-A3a** You'll see we carried the landscaping of the trees all the way across along the roadways so we're blocking the parcel as best as possible completely across the frontage.

Karen Nuckols-2752 Daniel Bray has a question regarding the tubes. You're gonna have deflated and inflated tubes. During the course of use they lose some air in them , will you have compressors at that site. How big and how much noise are they going to create.

Mr. Crance – they probably will use an ultra quiet Honda generator or air type of blower. He really don't foresee an air compressor, if he had a compressor he would get something that's one of the most quiet available.

M.L. Haring- are there any other questions.

Norman Torkelson, Stockton Planning Board, we've heard that on a good day there could be 2,000 people a day going through there and he's wondering if 2 port a potty's is an appropriate # for 2,000 people.

Mr. Bayer – there are additional port a potty s at the parking facility up at the roller rink.

Norman Torkelson – one, two, three?

Mr. Hoffman – Mr. Crance, how many port a potty s do we have at the roller rink?

Mr. Crance – it would be very rare to do that, he was asked on a peak day but he believes they have 16 outhouses and that on a peak day they could have them serviced twice.

Norman Torkelson – you have no intention of placing more than 2 port a potty's at that site where they're disembarking from the buses.

Mr. Bayer – the port a potty's at the site are more for the employees as is the temporary seasonal canopy and as Mr. Crance testified there are 16 or so port a potty's up at the parking area and he thinks that's more than adequate.

M.L. Haring – any other questions from the public.

M.L. Haring – then we'll move on.

Mr. Hoffman – Madam Chair they have Randy Kertes from Sadat Associates whose their geologist addressing the environmental issues on the site- would like to have him sworn.

9

Randy Kertes was sworn in, gave his credentials and certifications.

M.L. Haring – the Board accepts him as an expert.

M.L. Haring – does anyone from the audience have any questions regarding his credentials.

Mr. Hoffman asked Randy Kertes if he could take us through his report to the Board.

Randy Kertes – he prepared an Environmental Impact Assessment in accordance with the Kingwood Ordinance 17-02-2013. This Environmental Impact Assessment was specifically for the applicants parcel- 3003 State Highway 29 (Block 50, Lot 9). It was in a Bound Report provided to the Board.

Mr. Hoffman – they have marked **EXHIBITS A-9 - EXHIBITS A-22** that are the EXHIBITS to the manual report that Mr. Kertes will be referring to..

Randy Kertes – in accordance with Kingwoods Ordinance he was relegated to look at the specific natural environs: surface water bodies; flood zones; wetlands and wetlands transition areas; steep slopes; highly eroded soils; seasonal high water table ; prime agricultural soils; and threatened and endangered species. **Photo #2-** shows the southern portion of the site and the concrete foundation on the central portion of the site. It's a heavily former utilized commercial property. **Photo #1** – shows another view of the concrete foundation on the southern portion of the property. Apparently it's used as a skate park unofficially. **Photo #3** – shows the northern portion of the site where the existing driveway is. This photograph along with the others give a general overview of the property itself- it's a former commercial site and most of the vegetation on the property, with exception of some large trees are what he would call a successional growth, so it's a heavily disturbed parcel. The **USGS Map** shows the site in the center of the property. **EXHIBIT A-11** Notice the **USGS Map** locates strains, Copper Creek is to the south and both the Little and Nishisakawick Creeks are to the north in Frenchtown. There are no blue line strains located on or adjacent to the property. **FIGURE-2** of his report shows another aerial view of the site. **FIGURE-3** - Then specifically dealing with the natural environs in accordance with the ordinance this is a NJDEP geographical information system (GIS) data layer for surface water bodies and notice the blue line indicates a surface water body that goes north and south to the left that is essentially the center line of the Delaware River so there is no surface water bodies on the applicants parcel. The parcel is indicated in red ink and blue is the surface water bodies. **FIGURE-4 – NJDEP - Wetlands map-** denoted in a blue purple color located west of the applicants parcel, notice there's no DEP digital wetlands located on the applicants site. **FIGURE-5 – Soils Map-** this portion of Kingwood is located with what are called soils designated as the Pope fine sandy loams. These Pope fine sandy loams are not steeply sloped; not designated as highly erodible soils and even with respect to the season high water table it was absent within the typical soil description within the Soil Conservation Report. Pope soils are not prime agricultural soils. Due to the lack of steep slopes, runoff is slow and erosion is slight. This is the end of **EXHIBIT A-11**. With respect to wetlands Eastern States performed a wetlands delineation associated with the applicants parcel and Mr. Edward Cook- the wetlands scientist delineated the 50' buffer along what is this un-named intermittent creek that flows underneath 29 and it's culvert-ed, it daylight, it's culvert-ed again and empties into the Delaware River. The fact that this un-named tributary doesn't show up on USGS map- as a blue line shows it's an intermittent creek that commonly flow during rain events and they commonly dry up too, so they're not extremely valuable habitats for threatened and endangered species; and also this creek receives storm water run off from Route 29 and flows during rain events. He concurs with Edward Cook that this wetland should have a wetland buffer of 50' and would not be expected to have a 150' wetland buffer. There are no wetlands on the property but there is a wetland transition area delineated as 50' out from this wetland line which is off the site but it runs semi parallel to the un-named tributary. This transition area clips the parcel in the northwest. Most of the vegetation on the parcel away from the wetlands transition area is all weeds and successional growth, not a high quality vegetation. The one last item with respect to what the ordinance requested was the analysis for threatened and endangered species. They were required to submit a letter to the Natural Heritage Program with a site location map requesting the Natural Heritage Program at the

NJDEP to indicate to them whether there were threatened and endangered species or habitats or species on the property. What the NJDEP does is they use what's called the Landscape Project which is a digital database

GIS systems driven, and they essentially look down from space on the face of the earth and they look for patches of land that have valuable habitat or potentially valuable habitat that could be wetlands, forested areas, even agricultural areas that might be potential habitat. They combine that land use with potential sightings or known sightings and they published what is called the Landscape Project and they labeled certain polygons on the face of the earth. As it turns out with this property here the DEP delineated a potential habitat for threatened and endangered species, in fact the response from the Heritage Program, on their site only, was a portion of the site was Bald Eagle foraging and potentially habitat for Cobra Clubtail (dragonfly). The Bald Eagle is endangered in New Jersey, it's been downgraded to threatened federally and the federal government is considering taking it off the list because its made such an incredible comeback since the lack of use of pesticides in the last 30 to 40 years. The DEP has located a polygon partially overlapping the western boundary just about 10% of the property and a little area to the south, it's approximately 10% of the entire site is designated as potential habitat. His personal and professional opinion is that there was no bald eagle nests on the property, they typically like tall trees and they like to minimize human contact and they like to seed cause their ultimately looking for food. The mature growth on the applicants property doesn't exist and not habitat even for nesting. Could it potentially be foraging, it could be, Bald Eagles are opportunists in species and are found commonly looking at road kill. If there were a dead groundhog on the applicants property he might fly by pick it up and take it back to their nest. It might fall into the Bald Eagle foraging and it's all along the Delaware River and many of its main stem tributaries. He thinks, his professional opinion-the re-development of this parcel with the addition of trees and reduction of storm water runoff as a reduction of the impervious cover would only enhance the natural value of the property as it stands today. With respect to cobra clubtail it is a water dependent species, there's no surface water bodies on the property, there's a very small amount of wetlands transition areas on the applicants property. It is his opinion, even though DEP potentially listed a small portion of the site potential threatened and endangered habitat, the applicants re-development plans would have negligible impact to these species even if they were present. In conclusion the applicant is looking for a short termed, 4 month window – June through September, low impact development, adding vegetation, addition of calipers, reduction in impervious cover results in a reduction of storm water runoff ultimately improving any potential impact to surface water bodies via storm water runoff.. By low impact he means that people are walking over the parcel, storage of tubes, no re-construction of a new structure and reduction in impervious cover, used seasonally, so he would classify that as low impact. The re-development doesn't require storm water management plan or a program. That by definition also provides evidence that it's a low impact development.

Mr. Hoffman – so we looked at **EXHIBIT-A-9**, **EXHIBIT-A-10** and **EXHIBIT A-11**. Lets talk about **EXHIBIT-A-12**.

Randy Kertes – **EXHIBIT-A-12**- this is the FIRM Map (Flood Insurance Rate Map) (**Appendix D**)– the FEMA map for the area and he's relying on the applicants engineer as to where the 100- year flood line is. Previously, prior to this submission it showed a little less- the property 100 year flood but now it's about half the parcel to the northwest of the parcel, excluding the concrete slab.

Randy Kertes -- **EXHIBIT -A -13** -This is the Soil Survey (**Appendix E**) for Hunterdon County and this is typical for the Pope fine sandy loam, this is another root of evidence that seasonal high water does not exist on the property.

Randy Kertes - **EXHIBIT – A-14 - Appendix F** – Request that went to the NJDEP Heritage Program. They are required to give them a description of the parcel, a form, fee, aerial photograph, site location USGS Map. They responded and indicated there are two (2) species based patches on the site, those are the polygons he described before, and there were two potential species, potential habitat, on the parcel-Bald Eagle foraging and Cobra Clubtail. Again, the Bald Eagle is State Endangered and Federally Threatened and the federal government is contemplating removing it entirely from any list because it has come back so well. Cobra

11

Clubtail is special concern, special concern if you want to think about the ranks - threatened, endangered and then special concern. NJDEP it's not threatened or endangered, but it's under special review because it might

be potentially threatened at some point, loss of habitat, the way that it breeds, special locations. He's not specifically privy to the reasons - the DEP is very protective. Cobra Clubtail is during the spring and summer and is water dependent. He has visited the site 6 or 7 times during the spring and summer and hasn't seen the Cobra Clubtail or Bald Eagle. Those were the only potential threatened endangered habitats that were documented. So, then what they did they thought they would use the townships information just to kind of round out so we're getting the entire picture about the habitat assessment.

Randy Kertes - **EXHIBIT- A-15-** this is what critical habitat is important for many reasons, it's actually critical habitat forest and grassland. Grass-line habitat is pink, orange, red and brown. Forest habitat is tan, teal green and gray. Here's the parcel with no colors designated and that's obviously as the result of the former commercial concrete successional growth that's there now.

Randy Kertes - **EXHIBIT- A-16-** Kingwood Township Conservation Plan Element, again this is a depth to bedrock and in this case bedrock is at least greater than 60" as shown on the legend on the left. Here's the parcel again and shows that bedrock is at some depth and from an environmental impact assessment issue the depth to bedrock what would happen during re-development of the site with foundations and so forth which is inconsequential here based on the applicants plans.

Randy Kertes - EXHIBIT-A-17- depth to seasonal high water table, applicants parcel and it's located in an area designated with a very terribly ugly brown color but it's greater than 60" in depth and that really has to do with potential re-development with foundations and in this case it's inconsequential but they thought they'd show it to us.

Randy Kertes - **EXHIBIT- A-18** – here's a Farmland capable soils from the Townships Conservation Plan Element and again applicants property here and no prime nor suitable important soils are present designated by either yellow or green.

Randy Kertes - EXHIBIT- A-19 – these are forested areas and again on the site you see some brown around the perimeter but that's actually the lot line. The Townships Conservation Plan doesn't recognize forested areas and it's mainly because of the former use and now what your seeing is successional growth which is re-growth. He's sure the site was cleared at one point and now you start to get scrub trees and weeds so it's not shown as being forested. On their proposed plan they're improving the property with planting trees and shrubs etc.

Charles McBride – quick question -just that we're all clear this is a map from 2008 and not 2088- it's not a projection of the future, is that correct?

Randy Kertes – that's correct.

Randy Kertes – **EXHIBIT-A-20-** this is the critical habitat from forest and wetlands; and merging wetlands. Again they're designated by tan, green, brownish green, series of purples and here's the property again with non colored legend so no critical habitat from forest and wetlands or merging wetlands are shown.

Randy Kertes – **EXHIBIT-A-21** – hydric soils again from the conservation plan element – these are soils that are potentially valuable because they may show the presence as to one of the three components of a wetlands you need: water, soils, vegetation and hydric soils. The site is located in an area that is designated not hydric so soil is drained very well.

Randy Kertes – **EXHIBIT-A-22** – Steep Slope Map from the Conservation Plan Element again, the applicants site is located in an area that is designated from 0 to 12% slopes. It's pretty evident that steep slopes don't exist

12

on the parcel.

Randy Kertes – in his professional opinion this site is suitable from an environmental perspective and no concerns from an environmental perspective based on the proposed use.

M.L. Haring- does the Board have any questions.

Tom Decker- has an LOI application been submitted to the DEP.

Randy Kertes – not that he's aware of.

Tom Decker – you're aware of the prior use of the property – do you have any concerns with that prior use and the current condition of the property for the use as proposed?

Randy Kertes- he read the Phase I that was prepared in 2009 by Brockerhoff Environmental Services LLC, and in reading the report they don't specifically say that there's documented evidence of any contamination on the property and that report is a typical report that you see on the street, so no he don't believe so.

M.L. Haring – any questions from the Board or professionals. No questions from the board or it's professionals.

Mr. Hoffman – Madam Chair, could we take a 5 minute break?

M.L. Haring – we'll take a 5 minute break.

M.L. Haring – we'll take questions from the public now for the geologist.

Michael Pisauro, on behalf of Diana Evans, he wanted to touch base with you on possible contamination. Did you take a look at all of what Hunterdon Industrial Gases did on the site ?

Mr. Hoffman – I'm sorry, what was the question?

Michael Pisauro – did he take a look at what Hunterdon Industrial Gases did on the site before it exploded?

Mr. Hoffman – don't mean to pick at your question but it's impossible to look at it since it doesn't exist anymore, what do you mean?

Michael Pisauro – examine, look at the history, what their activities were on the site.

Randy Kertes – reviewed the Phase I Assessment prepared by Brockerhoff Environmental.

Michael Pisauro – and if I recall correctly they did not do soil borings, correct?

Randy Kertes – that is correct.

Michael Pisauro - and you did not do any independent investigation of what contamination may or may not be on that property as a result of past commercial activities.

Mr. Hoffman – you mean soil borings?

Michael Pisauro – any investigation on the site itself.

Randy Kertes – I did not.

Mr. Hoffman – on the physical site itself as opposed to looking at documentation outside a data base maintained by the DEP?

Michael Pisauro – well you looked at the Phase I done by the township, did you look at any other documents, reports or evidence?

Randy Kertes – no, did not.

Michael Pisauro – did you do any ground water testing, there was testimony that there was a well on site- did you look at ground water contamination?

Randy Kertes - no.

Michael Pisauro – do you know what chemicals the former user used at the site?

Mr. Hoffman – from first hand knowledge?

Michael Pisauro – from his review of any of the material.

Randy Kertes – there's a main chemical they used was calcium.

Mr. Hoffman – and this would be to your understanding from documentation developed by somebody else, correct?

Randy Kertes – that's correct.

Randy Kertes – just a brief understanding what he knows about the production of the acetylene, calcium carbide is utilized, it's a (CaC_2) and that's about all he knows about the production of the acetylene.

Michael Pisauro – you indicated in your testimony and in your report that the proposed use is a low impact use - is that correct?

Randy Kertes – that's correct.

Michael Pisauro – is there any accepted definition in the environmental community as to what low impact is?

Randy Kertes - no, it's a qualitative description, and as he previously testified he would consider a high impact- new structures, the construction of storm water detention basins for water quality, backhoe operations and so as he previously stated given the fact that it's a short temporal surface activity and with the site being improved with the addition of calipers and reduction of impervious cover he would say that it qualifies as Randy S. Kertes definition of low impact.

Michael Pisauro – on a good day, he believes testimony was that 2,000 people would be using this site, 45,000 or 50,000 people will be using this site during a season. That's a lot more than what you would normally expect in a residence, correct?

Mr. Hoffman – you mean a single family residence?

Michael Pisauro – a single family residence or even a townhouse.

Randy Kertes – yes.

Michael PISAURO – and you indicated that because of the removal of some of the concrete slab there will be a reduction of the storm-water runoff.

Randy Kertes – that's correct.

Michael PISAURO - did you run any calculations as to what it is now and what it is going to be proposed?

Randy Kertes – no, he did not.

Michael PISAURO – so you don't know if it's minuscule or huge amount of reduction

Randy Kertes – based on what he knows about the parcel, storm-water run off is generated by rain falls on to the surface of the earth and when it rains a lot you get more runoff, the soils on the site are sandy loams so they drain well. With a 33% reduction of impervious cover he would firmly say there would be most likely a decrease storm-water runoff on the property.

Michael PISAURO – do you know what the runoff is now?

Randy Kertes – no, it wasn't required by the ordinance.

Michael PISAURO – if we could put **EXHIBIT - A-11** on please. Looking at the 4th page. This indicates there is wetlands on the western side of the property.

Randy Kertes – the NJDEP has through using GIS, using a sharpie if you will, delineated an area where there are most likely wetlands. They have not been documented or surveyed to his knowledge.

Michael PISAURO – the DEP- GIS system also takes submitted wetlands LOI's and puts it into its GIS system that may or may be something that has actually been documented.

Randy Kertes – that's true.

Michael PISAURO – do you know whether that blue area on the west is the wetlands or the wetlands plus the buffer.

Randy Kertes – that's just the potential digital designated wetlands by the DEP.

Michael PISAURO – it does not include the buffer or transitional area.

Randy Kertes – no, it does not.

Michael PISAURO - no indication on this that it is a wetlands exceptional or ordinary resource.

Mr. Hoffman – again we're off site, correct?

Michael PISAURO – but there's no indication whether that's an exceptional wetlands.

Randy Kertes – no indication.

Mr. Hoffman – referring to the blue, off site, to the left.

15

Michael PISAURO – and if it is a wetlands with exceptional resource that would require a 150' transition area, correct?

Randy Kertes – it would, yes.

Michael PISAURO – now using this prior documents showed a wetlands transition area to the north of the site, that's not here.

Randy Kertes – the DEP data does not show the wetlands associated with that intermittent tributary.

Mr. Hoffman – looking at page 4 of **EXHIBIT-11** is this the kind of data information a geologist in your profession relies upon on formulating an opinion.

Randy Kertes – it's one of many pieces of information.

Michael PISAURO - **EXHIBIT-A-3a** - now, on the far north that's that un-named tributary, sort of the dashed line.

Randy Kertes - P.S. This is the intermittent creek un-named tributary that flows from -originates on the western side, eastern side of 29, culvert-ed 24” pipe, 33” pipe daylights temporarily and then is culvert ed again.

Michael PISAURO – now that 50' wetlands transition area is not related to tributary but because there's a wetlands

Randy Kertes – Edward Cook, wetlands scientist, on behalf of the applicant delineated a wetland delineation area associated with this creek.

Michael PISAURO - there's a Conservation Easement Boundary Marker (CEB) does that mean there was a previous LOI for that wetland.

Randy Kertes – he's not sure he can answer that question.

Michael PISAURO – did you take a look through any of the DEP records to see if there was a previous freshwater wetlands permit or letter of interpretation regarding that wetlands on the northern side.

Randy Kertes – he did not.

Michael PISAURO - in your experience have you done endangered species surveys.

Randy Kertes- he has, correct.

Michael PISAURO – and you done them for Bald Eagle?

Randy Kertes – no, I have not.

Michael PISAURO – how about the Cobra Clubtail?

Randy Kertes – no, I have not.

Michael PISAURO- Great Blue Heron?

Randy Kertes – no.

Michael PISAURO - Osprey?

Randy Kertes - no.

Michael PISAURO - how about Cliff Swallow?

Randy Kertes - no.

Michael PISAURO - those were all species that DEP indicated that were possibly on site or in the vicinity.

Randy Kertes - that's not true, they were designated within the vicinity but not on the site. DEP designated Bald Eagle foraging and Cobra Clubtail potentially on the site.

Michael PISAURO - **EXHIBIT - A-14** -this is the immediate vicinity of the project site and for the Cliff Swallow-breeding sighting-confirmed, correct.

Randy Kertes - this is within the immediate vicinity but not on the project site.

Michael PISAURO - correct, that means DEP actually received a report and verified that there was a report of species of special concern in the vicinity.

Randy Kertes - that's correct.

Michael PISAURO - you know that is a wetlands pending breed (Cliff Swallow)

Randy Kertes - his does not know.

Mr. Hoffman - what are you referring to.

Michael PISAURO - the Cliff Swallow.

Randy Kertes - it sounds like its not Cliff Swallow but he don't know for sure.

Michael PISAURO - if a species is pending on the wetlands, that wetlands may be exceptional resources, correct?

Randy Kertes - what wetlands are you talking about?

Michael PISAURO - the wetlands that it uses, so that would give it a 150' transition area

Randy Kertes - the wetland that it uses?

Mr. Hoffman - referring to the Cliff Swallow.

Randy Kertes - but it potentially might. Just because these are necessarily here doesn't mean DEP will lock in a 150' buffer. I've been involved in projects where, development projects, where they claim that Wood Turtle was located on. Wood Turtle, for instance, needs perennial free flowing clean streams. The DEP delineated that the site, (Princeton), was Wood Turtle habitat. They did an assessment, re-did the wetlands, and the site had these washes like out west, intermittent streams, so his point is that even though this is on this list doesn't necessarily mean wetlands associated with that species is going to have a 150' buffer.

Michael PISAURO - in this one it's not, they think it is habitat, Cliff Swallow has been confirmed there.

Randy Kertes – I don't know where it is.

Michael Pisauro – it's in the vicinity.

Randy Kertes – it's in the vicinity, yes.

Michael Pisauro – Cobra Clubtail – Exuviae Sighting, what does that mean?

Randy Kertes – he does not know what Exuviae Sighting means.

Michael Pisauro – again that's a species that relies on wet water.

Randy Kertes – that's correct.

Michael Pisauro – again if it's in the wetlands to the north or to the west that may impact the transition area.

Randy Kertes – yes.

Charles McBride – what transitional areas are you referring to in your questioning of the applicant.

Michael Pisauro – sure, there are two (2), one that was on **EXHIBIT A-3** showing a 50' transition area on the north side of the property

C. McBride – un-identified, on the map it doesn't show as a wetlands area.

Michael Pisauro – it wouldn't have a transition area if it was in the wetlands.

Mr. Hoffman – comment-he's not under oath. He's not testifying. I appreciate your questions.

Michael Pisauro – that was placed there by the applicants professionals, that transition area based upon an investigation done by....

Randy Kertes – he spoke to Edward Cook the wetlands scientist and we both concur with respect to what they think the value of that wetland is based on its proximity to that intermittent creek, receives storm-water runoff from Route 29, it's partially culvert ed and it's our both professional opinion that it deserves immediate value wetland buffer.

Mr. Hoffman – could you explain to us once again who Mr. Cook is.

Randy Kertes – Edward Cook works for Eastern States Environmental Associates and they're in Kunkletown, Pa. They were hired by the applicant to do a wetland delineation.

Michael Pisauro – his report or findings is not in your report other than referencing that you read it and concurred. His actual findings are not in your report.

Randy Kertes – his (Edward Cook) findings are referenced on the site plans and his (Randy Kertes) visual inspection of the area - he concurs with his (Edward Cook) buffer requirements.

Michael Pisauro – did he prepare a report.

Randy Kertes – you mean a written report?

Michael Pisauro – a written report.

Mr. Hoffman- was there a verbal report or written report- if you can answer that.

Randy Kertes – he hasn't seen a written report . His conversations were verbal.

Michael Pisauro – on this- not sure where it is but it's Wildlife Habitat on the Project Site based on search. One for the actual site. There is a DEP response. Same report-different page. Again, Cobra Clubtail-Exuviae Sighting. Do you know if there's an actual sighting of some part or the specie itself on the site?

Randy Kertes – he's does not know.

Michael Pisauro – the fact that it says a sighting would indicate that there's in fact some finding that the species was there.

Randy Kertes – potentially.

Michael Pisauro – but it's not the amorphous foraging.

Randy Kertes – it's also his understanding that species of special concern would not be utilized heavily in the determination of a wetland buffer of 150'. Species with threatened or endangered would be more heavily relied upon by DEP.

Michael Pisauro – Bald Eagles have a fairly large foraging range, correct?

Randy Kertes – yes.

Michael Pisauro – you said there was a site a few miles south.

Randy Kertes – there's a new nest that everyone knows about that's several miles south.

Michael Pisauro – so it's range could include this site.

Randy Kertes – it could fly over it.

Michael Pisauro – and utilize it for foraging.

Randy Kertes – Bald Eagles are opportunistic, anything that's dead they'll pick up.

Michael Pisauro – do you know what territorial display means in reference to the Cobra Clubtail.

Randy Kertes – he don't specifically know but it sounds-he don't specifically know.

Michael Pisauro – the fact that an endangered species or a species of special concern utilizes the site or is located on the site or uses the wetlands around it may impact the classification of the wetlands.

Randy Kertes – which site?

Michael Pisauro – the project site.

Michael Pisauro – the applicants parcel if it's being utilized by a endangered species or a species of special concern that would impact the transition area for the wetlands?

Randy Kertes – the development of a transitional buffer is a discussion that takes place between the wetland professional and the DEP, reports produced they determine as to whether they think based on the value of the wetland based on their physical observation as to what the transition area would be. Again, as he previously testified he's in concurrence with Mr. Cooks analysis that, that wetland connected with that intermittent creek that is partially culvert-ed and gets a great deal of storm-water from 29 would not be exceptional value wetlands.

Michael Pisauro – but under N.J.A.C. 7:7A-2.4 – by default a wetland that is utilized by an endangered or threatened species gets the 150 transitional area.

Michael Pisauro – by default it's granted a 150' buffer.

Randy Kertes – if it's identified.

Randy Kertes – assuming it's there. Just because this is here doesn't necessarily say that it's associated with that tributary to the north.

Michael Pisauro – it would be associated with the wetlands, not the tributary. The tributary is separate and apart from the wetlands itself.

Randy Kertes - the NJDEP-GIS data base, as I indicated before, use sharpie type boundaries. All he can say is that he's been on the site numerous times and that western edge which is essentially composed of the trail, the cinder trail and the southern edge of the applicants parcel which is concrete slab, and there's a trail, a grass trail located, those portions that are delineated potentially by DEP were not the habitat he would think valuable, extremely valuable habitat- it's an old commercial property.

Mr. Hoffman – and again his point is his question assumes the present, if you have proof better than we can rely upon from the DEP etc. - if you show it to him and ask him a question I'm certain he can try and answer the question.

Michael Pisauro – don't have the proof but again there's sightings and display- we don't know what that means from the testimony today, but the DEP finds that these species, based upon the evidence, are there that would impact the transition areas which would impact your driveway.

Mr. Hoffman – but you don't have those proofs.

Michael Pisauro – but it's a question to an expert.

Randy Kertes – and I've said numerous times in his professional opinion that would be a 50' wetland transition area based on his observation of that wetland.

Michael Pisauro – and you did not do any formal T & E surveys on this property.

Randy Kertes – no, he did not.

Michael Pisauro – and Mr. Cooks report, data, documents is not part of your report.

Randy Kertes – it's part of my report that's reflected on the applicants site plans and his conversation with Edward Cook.

Michael Pisauro - but I could not go through your report and look and find that information of what he actually found, observed and discovered.

Mr. Hoffman – I'm trying to understand that question.

Michael Pisauro – sure, there's nothing in your EIS Report that sets forth the data he collected to determine whether wetlands were there or not there.

Mr. Hoffman – it's depicted on the site plan upon which he's formulating his opinion.

Michael Pisauro – but it's not in his report itself.

Mr. Hoffman – the site plan is in the report.

Charles McBride – has a couple of questions. You're inferring that the animal on the endangered list is effected by the wetlands itself, could one of these animals not be associated with wetlands have a greater endangered species ranking and therefore trump out at being wet because the Bald Eagle may not have anything to do with wetlands and may be discouraged by wetlands and make that property or make the association of that as not be designated as wetlands. Would that be a fair statement.

Mr. Hoffman/Randy Kertes – not sure of that.

Charles McBride – obviously the Cobra Clubtail is an insect that goes for water but the Bald Eagle is not a water born animal and, in fact, they thrive without the wetlands with that influence where the transition area would be.

Mr. Hoffman – so the Bald Eagle is not associated necessarily with the presence of wetlands.

Randy Kertes - that's correct.

Mr. Hoffman – the Bald Eagle doesn't effect your opinion based on where the wetlands delineation is shown on the site plan in terms of transition area.

Michael Pisauro – similar to how DEP determines wetlands it is a mix of this is what we based upon, what we seen satellite wise could be habitat but also a corporate actual data, so actual sitings, actual confirms, surveys showing that the species are there.

Randy Kertes – that's correct.

Michael Pisauro – so whether this is a broad brush sharpie as you described it, or actual data driven findings you don't know what it's based upon what DEP is supplied to you.

Randy Kertes – he don't, and they're very protective with respect to locations for obvious reasons.

Mr. Hoffman – and the data they receive is the data that the geologist rely on.

Randy Kertes – that's correct.

Sandra McNichol – she's here tonight representing the Kingwood Township Environmental Commission, their

chair was unable to attend so she was asked to go over with the applicant. The Environmental Commission prepares site reviews for projects that come before the Planning Board as well as certain projects that come before the Board of Adjustment so they did prepare an overview.

Charles McBride – Madam Chair-what is this organization, who sponsors it, who's part of it?

Sandra McNichol – it's your Township Environmental Commission.

Charles McBride – okay, never heard of it before. Can you give us a little bit as to when it was chartered, when it was established.

Sandra McNichol – no, I can't, I don't have that information. It's established through Township Ordinance.

Sandra McNichol- I'm a member of your community and serve as a volunteer on the Environmental Commission. Your Township has an Environmental Commission.

Charles McBride – that's great, I have no idea about it.

Charles McBride – Mr. Pierce, how are we supposed to know if there credited or not and yes, I'm a volunteer also.

David Pierce – the Environmental Commission was established by Ordinance by the Township Committee and it's charged with, among other things, reviewing development applications and providing reports to the Planning Board and Board of Adjustment. They have provided reports to this Board previously in connection with the application to develop the Keller property for a solar generating facility, so they are charged with reviewing the environmental issues, they have no authority to impose conditions but they're an advisory body and it is appropriate for them to provide information and reports to this Board and the Planning Board in connection with applications.

C. McBride – thank you and I apologize I just never heard of your commission before.

Sandra McNichol – so you all did receive an Environmental Commission subdivision, site plan review. We sat down and reviewed the site plans and the Environmental Impact Assessment provided by the applicant. The Environmental Commission had a few questions which you all saw on the right hand side of that report. So she needs to address those questions tonight, some of them have been addressed but there a few things that she may be a little redundant but she does need to go through the motions here. They all spent a lot of time reviewing this. Their first question, the gentleman before was asking you about “low impact” and use of the property- you used the term that she's not familiar with and that was temporal in regard to low impact and in your report it said temporal low impact. Could you define that for me please?

Randy Kertes – the fact that the applicants use of the site is a four (4) month period, it's a short time period throughout the entire year.

Sandra McNichol – ok, thank you.

Sandra McNichol – so you do feel that the increased use of the property which is an increase in impervious surface with the addition of the parking area, the macadam area for access to the tubing area, all the people walking over the property, you would still classify that as low impact.

Randy Kertes – actually there's an approximate 33% reduction in impervious cover, not an increase.

Mr. Hoffman – that's reflected on the ledger, upper left, **EXHIBIT-A3a**. They have testified that they are

reducing the amount of the concrete slab, even more so than their original submission.

Randy Kertes – there's an approximate 33% reduction of impervious cover which ultimately results in a lessening of storm-water runoff and the fact that trees are being installed, trees have this way of keeping water

on the site, so that will even reduce the storm water runoff from the property, that's why I term low impact and you know at the end of the day this site is gonna look a lot better.

Sandra McNichol – but this calculation does not include the new macadam area.

Mr. Hoffman – I'm not quite sure what you mean by macadam.

Sandra McNichol - you're adding asphalt, adding stones to the surface now, so it may balance out to be the same.

Mr. Hoffman – it might be a better question for Mr. Bayer- the calculations shown here are existing vs proposed.

Sandra McNichol – did you add all the changes there.

Mr. Bayer - yes, he did.

Sandra McNichol – **Question #2** - how will people be prevented from short-cutting through wetlands (which hasn't been delineated yet) and endangered/threatened species habitat, to get to the river, rather than walking to the Kingwood Boat Launch? In your variance application the proposed use, you asked to access the river via Kingwood Boat Launch or a trail to the river over DEP land and a....

Mr. Hoffman – Madam Chair, if it pleases the Board, Mr. Bayer's here, your Environmental Commission representative is here, do you mind if we jockey back and forth between two because your time is here tonight and we appreciate that.

Mr. Hoffman – I'll summarize and correct me if I'm wrong- the proposed use has people coming off the buses, coming across here to get their tubes, pass the canopy, up on to state land and heading south to where they get into the Delaware, so we're not going to be encouraging or permitting anybody to come into the transition area over here, which again is transition not wetlands and I don't see on the site plan any indication of wetlands along the state property, the canal path, that the folks are going to use to get into the water.

Sandra McNichol – well, if you look at the Environmental Commissions Map #2 you can see where we had wetlands and their concern is that people are going to cut into the river there and cross those wetlands there.

Mr. Hoffman – are you referring to the colored portion to the left? That's not something we have control over, it's off site.

Sandra McNichol – but will you be directing the people to the path? How will you be directing the people to stay on the path, in other words, exiting your property and directing them down the path.

Mr. Hoffman – they're going to discuss with the State of New Jersey continuing this coverage that will match the coverage of the path up to here, and then the people will walk down this way to where they get into the Delaware River, so by virtue of the path existing people will be visually caused to walk on the path.

M.L. Haring – are you satisfied with that?

Sandra McNichol – yes.

Sandra McNichol – **Question #3** – was the site's soil adequately cleaned up and tested after the Hunterdon Industrial Gas explosion, which occurred on March 26, 1996? She's going to refer to the Phase 1 Assessment, page 3, 9 and 17. On page 9- we don't know, no one actually knows if it was adequately cleaned up or not. **Record Review** -3rd paragraph-” *Since the Site has historically been used as a gas manufacturing facility, it is possible that hazardous chemicals or waste may have been used or generated from the Site at one time.*” 4th paragraph - “*If environmental assurance is desired, then a subsurface investigation, including soil and groundwater sampling should be conducted.*” The Environmental Commission wants to ask you to pay attention to that, especially with the fact that you will be having so many people walk across this site now, if there is contamination in the soil it's very easy to stir that up and cause problems.

Mr. Hoffman – they are putting a surface on top of the existing condition and encouraging the people to walk upon that, and again we took this property from the Township and the Township sold it to the applicant as it exists when the township purchased it. He believes they answered this question earlier from the professionals to the Board.

Randy Kertes – he did. He was asked if the applicants proposed activities – would he be concerned and he said, no.

Sandra McNichol – you do know that children are playing there now with the potential hazardous material on that property – just so you are aware of that, they're skateboarding and doing various things there so it might be of some interest to you to pay attention to that.

Sandra McNichol – **Question #4** - This is a floodplain -what happens during a flood? How will the fence impact/impede water or debris during a flood? How will tubes, life vests, portable toilets, and other equipment be secured in case of flood?

Mr. Hoffman – if they have advance notice that there's going to be a condition of weather that's going to lead to the flooding of the Delaware, certainly the applicants going to act accordingly like any other property owner and anything that could float away will be put in a safe place and they have the off site roller rink to do that and as to the fencing and any impact on flooding he thinks that's better for Mr. Bayer to comment.

Mr. Bayer – as I mentioned earlier, the existing concrete slab, which is going to be cut back, is above the elevation of the 100 yr. Flood, so when we have that flood we won't have that impact it will be below them so they won't have the tubes and everything carried away because they'll be above that flood elevation.

Mr. Hoffman – so from an engineers perspective it's highly unlikely to occur and from an ordinary property owner if we know that something is going to occur in terms of a weather event they'll act accordingly.

Greg Crance – if they know there is going to be a major flood they would remove everything.

Mr. Hoffman – it's of great value to us.

Susan McNichol – **Question #5** - will water be used on the site-we found now that there's the existence of a well, an old well and the Environmental Commission also wonders if there is an old septic system on the site.

Mr. Bayer – as he said earlier the existing well is going to be sealed. He walked the site most recently and found no evidence of an existing septic. There's no records anywhere that are available. The applicant is not proposing any water use and that well will be sealed.

Mr. Hoffman – the gentleman that had raised the concern of the septic, he believes he testified earlier tonight

that he changed his opinion on the existence of a septic-you don't believe ones there.

Gary Search, from the audience said: No, that the right corner is not the septic. He has pictures of the existing building and can point out where the bathroom was.

Susan McNichol – so there is the potential there that there is a septic system, there was an office there, people worked there all day long, it would behoove you to do some sort of, I don't know what you could do, sonar or metal detection or whatever it is.

Mr. Hoffman – could we see that picture, when you have a chance -afterward. That would be great.

Gary Search – I'll bring them up if the Board allows him to.

Mr. Hoffman – the picture would help and we could have our professionals examine it.

Susan McNichol – you know in the old days there often used to be not the best type of septic/ cesspool situation. I'm sure you wouldn't want a collapse of some sort to happen there, if there was some sort of an item like that there. It might be a good idea to check that out.

Mr. Hoffman – my professionals might have done that already but we'll check the town records to see if there was any issue of a permit to create a septic field on the site. They'll look at the picture and do a site inspection as well.

Susan McNichol – you can check the records , but not always were records properly in the past. Her suggestion would be to do some metal detection over the place to see if there was ever anything there.

Mr. Hoffman – other than the tank- the tank is concrete.

Susan McNichol – in the old days it might not have been concrete, it could have been metal. We don't know what was there.

Mr. Hoffman – if we could take a look at the picture and than we'll do a further investigation and then report back to the Board in August based on the picture and consideration that it's to the south and not to the north.

M.L. Haring – that would be fine.

Susan McNichol – your tubing website says there are showers and that sort of thing, water uses there. Where will the tubes be washed off and is any of that going to be done on the site?

Mr. Hoffman – there's no cleaning on site that will occur and if there's any cleaning it would be done by rag..The tubes come out of the water relatively clean.

Susan McNichol – we did discuss the portable toilets whether they'd be enough. In the event of an emergency of some sort- the Environmental Commission felt a little bit uncomfortable about the access in an emergency for cleaning or getting people in and out of there quickly.

Mr. Hoffman – on the first part cleaning – so I understand what you mean by that.

Susan McNichol – portable toilets if they need to be taken care of in a hurry on a particular day.

Mr. Hoffman – they moved the situation of the portable toilets with this paving here to make them more readily accessible to the driveway and likewise the driveway larger now, because they reduced the radius here,

and so emergency vehicles should readily be able to get in and out of there if a bus can get in and out of there.

Susan McNichol – was there any thought of management of humans on the site, as far as their ability to move around on the site- is that something you have looked at.

Mr. Hoffman – this was a good suggestion from one of the Board members, I believe Mr. McBride, we eliminated the pathway here along from 12 o'clock to 3 o'clock on the driveway to encourage people to simply depart here on the south-side, gather their tube, move to the canopy and get up onto the trail of the state property so that the flow of pedestrian traffic should be from and again, I'm referring to **EXHIBIT A-3a**, off the bus, get a tube, move up and get onto state property and get onto the path to the south to where they get into the Delaware River, so the situation of the property should encourage the pedestrian flow to be simply that.

Susan McNichol – her final assessment from the Board, from the Commission is: The EC respectfully asks the Board of Adjustment that if you should grant these variances, that as a condition of approval, you ask that the sub-surface investigation, including soil and ground water samples be added to that. Thank You very much.

Gary Search – these are the original pictures from the 96, if I may with your approval.

Mr. Hoffman – Madam Chair-do you want to mark them.

M.L. Haring – Gary, you know you would be parting with them once they're marked in evidence.

Gary Search – yes.

David Pierce- for the purpose of the application and once it's completed then can be returned.

Gary Search – you can get them from any of the newspapers, they still have them on file. They have plenty more down there.

David Pierce has marked the newspapers as follows:

THE EXPRESS TIMES, dated 3 -27-96, EXHIBIT - 01
THECOURIER NEWS, dated 3-27-96, EXHIBIT - 02

Mr. Hoffman – Mr. Pierce, can I see them briefly.

Mr. Hoffman – looking at **EXHIBIT- 02** if you can tell us what's depicted in the picture.

Gary Search – here's 29 right in front pf it, right here is the entrance way you can see the old doorway, the bathroom is right there, this was the office – south-side – the storage tanks right along the side of it.

Mr. Hoffman – out of curiosity on the other side of Route 29-are those septic systems that those people have or are they city water/ city sewer.

Gary Search – we all have septic systems.

Mr. Hoffman – is there anything you want to tell us about **EXHIBIT -01**

Gary Search – just a further picture of it.

Mr. Hoffman- Madam Chair, if it pleases the Board, Mr. Hardcastle can take this and have color copies made.

M.L. Haring – yes.

Mr. Hoffman – and bring the originals back.

David Pierce – lets circulate those amongst the Board now so they have the opportunity to view them.

Mr. Hoffman – not at this time. It's not proposed in the site plan. Without the electric on the site, they are going to use an ultra quiet generator but not a compressor.

Bob Mauer, 165 Byram Lane, Kingwood Township – what is an ultra- quiet generator?

Greg Crance – Honda.

Bob Mauer – and how many decibels is that?

Greg Crance – I'd have to look it up.

Bob Mauer – generators are not very quiet.

Mr. Hoffman – Mr. Kertes says they're really good.

Bob Mauer – he would like to ask the expert if he's done any work for the state in regards to the whole operation.

Mr. Hoffman – I'm sorry, Mr. Kertes.

Bob Mauer – from the beginning of the operation, to the take out point have you done any state impact studies for the entire operation for the State of New Jersey, NJDEP or Park Commission.

Mr. Hoffman – you mean for that part of the state land.

Bob Mauer – well, we continue to be talking about a small section of this operation vs the entire impact in regards to environment, impact on community, traffic, pollution. I'm asking a simple question have you been involved with anything bigger than just the parcel we're talking about.

Randy Kertes – my firm prepared site plans to assist in the reception of state permits associated with the concession agreement for the installation of two sets of ladders that were approved by the Division of Land Use Regulation in accordance with the concession agreement. We prepared those site plans.

Mr. Hoffman – so off site we have two ladders that we are going to enter into the water on state land, so we did an evaluation for the purposes relative to the concession agreement.

Randy Kertes - he prepared site plans to assist in the application, signed and sealed by his president, PE.

Bob Mauer – so how about the six or seven miles between the place you go in and come out?

Randy Kertes – no assessment.

Bob Mauer – no assessment, so on a day like today, typical, couple of thunder showers I wouldn't sit in the river-I'd be getting out. 2,000 people coming down stream, is there any impact in regards to 2,000 people coming across the banks of the shore in regards to the environment.

Mr. Hoffman – what part of the bank?

Bob Mauer – anywhere.

Mr. Hoffman – the State of New Jersey, the Federal Government, in terms of the concession agreement, and what we are going to do off site, the concession agreement are taking them to task in terms of Environmental Impact; and certainly you can speak to the State and/or the Federal Government and ask any questions of them relative to what they're doing off site, but again the States is very concerned about an Environmental Impact. Just the mere placement of two ladders in the water requires them to engage their environmental professionals to respond to the state on how we are going to get this done with the least amount of impact to the environment, in terms of off site concession agreement activity.

Bob Mauer – what public hearings have been held?

Mr. Hoffman – none. None have been required.

Bob Mauer – what public hearings are intended to be held.

Mr. Hoffman – none that he's aware of, none are required..

Bob Mauer – so we have the letting of this contract without any public hearings.

Mr. Hoffman – that's correct.

Bob Mauer – is the Board aware that the concession agreement has not been made available to the public?

M.L. Haring – I'm not aware of that and I don't know that it has an impact on this.

Mr. Hoffman – I'd be very surprised if you made an OPRAH request for the concession agreement and didn't receive a copy of it.

Bob Mauer – the day after the last hearing I made an open call to George Whitley of the Office of Leases – Jersey DEP and he promised me a copy of the concession agreement. I called him yesterday and he has still not come up with the concession agreement so the public, at this point, is in the dark.

Bob Mauer – we don't know the hours, the number of limited tubers, we don't know anything in regards to that. Chairperson at this point I think we have the cart ahead of the horse, this is a small part of the operation. I think with the size of this operation, the impact on traffic, community, the Bald Eagles...Excuse me.

David Pierce – Mr. Mauer- excuse me! You are making comments on the application-your objection to the application. We explained this at the last meeting -this is the time for questions and you will be given an opportunity to express your objections at the appropriate time.

Bob Mauer – here's the question. I'd like to suggest we table this hearing until a public hearing is held on the entire operation rather than going forward with just a piece of it.

M.L. Haring - Thank you for your question but we're moving on.

Bob Mauer – his next question is, in your professional opinion should there be an impact on the environment over the 7 mile length of that stream in regards to this operation.

Mr. Hoffman - could you restate the question please.

Bob Mauer – we have a professional in regards to impact on the environment, rather than the small site we're talking about, in your professional opinion should there be concern in regards to the fish, wildlife or other impacts the river.

Mr. Hoffman – the scope of report is limited to the parcel itself and that's all that is required of the MLUL relative to the variance application.

Randy Kertes – that's correct.

Bob Mauer – I said in his professional opinion, not toward his report. Six miles of river- Bald Eagles, fish, what have you, in your professional opinion should we have a concern for the environment considering 2,000 tubers at peak time

Mr. Hoffman – this is beyond the scope of his report. His report is limited....

Bob Mauer – I'm not asking about his report, I'm asking in his professional opinion, he's come in as an expert witness.

Mr. Hoffman – I can't tell him to give an expert opinion beyond that which he's retained for. His report is limited to what is necessary to make an application to the Board to secure a variance and based on the MLUL. Did not evaluate off site conditions other than that which is necessary to evaluate the parcel itself, for instance, when they looked at the endangered species or species of various classifications. The records that they looked at from DEP say these Bald Eagles and Cobra Clubtail (dragonflies) can be in the area and that was part of his report so to that extent, yes, we looked at off site conditions and considered off site conditions but other than that which was necessary to secure the variance, we haven't spoken to off site conditions.

Randy Kertes – he thinks he can answer that by saying the applicants clients are here now and they've been here for many years and that the re-development of this parcel, that we're talking about here, will make the applicants operation smoother and more efficient; and will make this parcel have less environmental impact. Overall that is how he can respond to that question.

Mr. Hoffman – I believe you were here when our traffic professional testified, again the use we're making of the property will reduce the traffic which has an impact on the environment, so to the extent those events or conditions off site, yes, his report addressed those.

Bob Mauer – I believe that's where we cut off at the last meeting, so we'll have an opportunity to address those traffic concerns?

Mr. Hoffman – Mr. Troutman was out on pre-planned vacation for tonight but he's bringing him back in August to finish the questioning.

Mr. Hoffman – and if you'd like a copy of the transcript of the last hearing, to refresh your recollection to what he testified to, please let us know and we'll make a copy.

Bob Mauer – should there be an entire impact study, of the entire project, in your professional opinion.

David Pierce - Mr. Mauer you've asked that question several times and the applicant has provided the answer that they are going to provide.

Bob Mauer – what was the answer?

Mr. Hoffman – I'll get you a transcript of tonight's hearing.

David Pierce – the applicants answer, if I can paraphrase it accurately, is that they believe and it is their position that they are not required, as part of the variance application for this particular property, to evaluate the environmental impacts of the overall operation over the entire length of the operation. That's what you're

asking should be done, as he understands it, listening to the response, their position is they're asking for a variance for this particular piece of property. They have received or won a bid to conduct operations on state property and without respect to this particular piece of property. They have already won the bid to conduct operations on the state property of the Frenchtown- at the Kingwood Boat Launch, at the Fairview ramp or parking area and at the Point Pleasant Bridge parking area and that's totally independent of what they're proposing on this site. He understands your frustration and your concern that there has been no public input in the process of crafting and responding to that bid and the preparation of the concession agreement for the use of the state lands, but that's really beyond the jurisdiction of this Board and this Board may ultimately decide that the potential impacts from the entire operation relate to the ability of the applicant to demonstrate or to satisfy the requirements to demonstrate a right to variance relief. But it's the applicants burden, they are aware of the issue, if they choose not to present that evidence, they choose not to present that evidence, then the Board will give that the appropriate consideration.

Mr. Hoffman – his witness has one comment to make in response to the questioning. He does want to point out, for the record, to clarify what he was saying before to the extent Mr. Kertes in his professional opinion was required to evaluate this parcel by considering conditions off site, he did, for example: of well, again, in part of his testimony he considered **EXHIBIT A-11** which showed the potential for the existence of wetlands off site relative to the site showed in the red area highlighted, so again to the extent necessary to evaluate the variance application from an environmental perspective they do consider off site conditions, the relative placement of potential wetlands existing in this, on page 4 of **EXHIBIT A-11**, that's just one example. Mr. Kertes has a response to the questioning as well.

Randy Kertes - the Delaware River Basin Commission maintains the auspices off of the main stem of the Delaware River and they've designated this area, they've sliced the main stem of the zones. The zone that is designated here in Kingwood is designated as Zone -1E, and this is right out of their water quality regulations, water uses to be protected: public water supplies after reasonable treatment, industrial water supplies after reasonable treatment, agricultural water supplies, maintenance and propagation of residential game fish, spawning and nursery habitat, passes of anadromous fish, wildlife and thirdly, recreation. Specifically a protective use according to the DRBC.

Mr. Hoffman – so this document is stating that in this area the State of New Jersey is designated for this very purpose of recreation.

Randy Kertes – yes, they designate recreation as full water contact, so it would be tubing and kayaking-falling off the tube into the water.

Mr. Hoffman – and for the record that's the Administrative Manual Part 3- Water Quality Regulations with Amendments through December 8, 2010 and that's found at 18CFR part 410.

Bob Mauer – so, with your professional opinion of those uses, is there ever a point where there is too many people?

Mr. Hoffman – and let me clarify this, that's the Federal Government making that determination as to recreational use. I'm sorry, go ahead.

Randy Kertes - “ I think I gave my answer, sir”

Bob Mauer - you just opened up the question of recreational uses, so whats too many?

Mr. Hoffman – there's no limit placed by the federal government.

Bob Mauer – in regards to the concession agreement, I'd like to request that since it's not known to the public, it's dark, that anytime it's referred to we open it up and specifically provide the information; many times in the last hearing we said the concession agreement has that - we can't read it, so at this point, until that's publicly available we need to go to the concession agreement and talk specifically to the terms of the agreement.

M.L. Haring – the concession agreement has no bearing on this variance, that is between Mr. Crance and the State. Where we enter into this is whether or not he can have relief to use that tract for this business.

Bob Mauer – respectively, if this agreement had a number of people allowed it would impact the number of buses going in and out of this property; we're blind to that - hours of operation, number of people, we don't know.

Mr. Hoffman – I'm not your attorney, but certainly everybody is aware of the **Open Public Records Act (OPRAH)** – just Google it OPRAH NJ.

Bob Mauer – he called up George Whitley and the file is too big to send. He can't send it e-mail. He promised him a hard copy- it hasn't come yet, it's not available.

M.L. Haring – and we can't help you get a copy.

Bob Mauer – it's not available to the public is what he's saying.

Bob Mauer – I'm just suggesting until it is we pull out the contract and read it.

M.L. Haring – well, Thank you for your suggestion.

M.L. Haring – is there anyone else.

L. Frank would like to ask Mr. Search a question about this- is it possible. **EXHIBIT 02 (Courier News)**. What is this over here, it looks like a built in swimming pool.

Gary Search – you're talking about the evaporation bed on the west/south side.

L. Frank – what were they evaporating there?

Gary Search – different liquids after cooling the tanks.. They used a lot of water there to cool the tanks.

L. Frank – that's cooling water?

Gary Search – yes.

Mr. Hoffman – water exposed to the open air, correct.

Gary Search – yes.

A. Planer – how long of a walk is it from the drop off point to the launch point?

Mr. Crance – approximately 250 yards.

M.L. Haring – does the Board have any other questions.

Mr. Hoffman – Madam Chair it looks like we have 10 minutes, he's done with his professional and it doesn't seem to be anymore questions so it seems they've gained 10 minutes tonight. He will bring his planner at the next meeting but first he will start off with Mr. Troutman to finish off his testimony on the traffic and questions from the public. I believe you folks have transcripts from the first day and will be getting transcripts of the second

Mr. Hoffman – the offer stands if the gentleman would like a copy of that select portion of the transcript for traffic to refresh his recollection. On a limited basis he'll make copies.

M.L.Haring – that's between the two of you.

M.L. Haring – we will be adjourning this part of the hearing this evening and will be resuming it on August 14, 2013 at 7:30 pm without re-noticing.

Motion by P. Stepanovsky, seconded by L. Frank. On roll call to vote..

**Aye: L. Frank, C. McBride, J. Laudenschach, D. Hewitt, P. Stepanovsky,
T. Ciacciarelli, M.L. Haring**

Abstain: None

Absent: None

OPEN TO PUBLIC:

C. McBride had a question for David Pierce, unfortunately it was in audible due to the noise and the microphone not picking up..

David Pierces response is as follows: That's a loaded question. Basically it would be limited to something that either a member of the Board or a member of the public who can testify about it and verify the information could talk about, for instance; if you were able to pull up a picture of the site from 1996 Mr. Search could have verified and authenticated that, that was an accurate depiction of the site and that would be appropriate to allow that, if it were some other report that nobody could authenticate or provide any background to, then that would not be appropriate.

David Pierce – The other thing they can do is Mr. Hoffman or Mr. Hardcastle can e-mail him copies of those as a PDF, we can put those exhibits themselves up on the screen.

COMMUNICATIONS/REPORTS:

Kingwood Township Minutes for: 3/25/2013 and 4/4/2013

ADJOURNMENT:

L. Frank moved to adjourn, seconded by J. Laudenschach. All in favor. Meeting adjourned at 10:24 PM.

**Barbara Wilson
Secretary
Board of Adjustment
Kingwood Township**

