

**KINGWOOD TOWNSHIP  
BOARD OF ADJUSTMENT**

**October 9, 2013  
MINUTES  
7:30 PM**

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

**PRESENT:**

L.. Frank  
C. McBride  
J. Laudенbach  
M. L. Haring  
P. Stepanovsky  
T. Ciacciarelli

B. Wilson, Sec  
D. Pierce, Atty  
A. Planer, Alt  
C. McGroarty,PP  
T. Decker, Eng

**ABSENT:**

D. Hewitt

**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:**

J. Laudенbach made a motion to vote on the September 11, 2013 minutes next month, seconded by C. McBride. On roll call to vote.

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

**Abstain: None**

**Absent: D. Hewitt**

**RESOLUTION:**

None

**NEW BUSINESS:**

**Hearing: Continuation from the August 14, 2013 meeting.  
Delaware River Tubing, Inc. BL 50, L 9**

M.L. Haring stated that it's imperative that everyone speaks into the microphone clearly. There seems to be a problem with our system picking up what's being said.

Mr. Hoffman, attorney for the applicant, stated that the applicant will yield to the public and objectors and asked that he be given the right to present rebuttal to any extent necessary.

M.L. Haring- we're going to take testimony from the public that we started last month. Mr. Lerch you wanted to present something, so we're going to have those presentations first this evening.

C. McBride- What is the protocol? How does this work? Do we do within 200 yards or 200 feet first and then the general public? How does it work?

D. Pierce – It's the property owners within 200 feet first and then the general public.

M.L. Haring – Testimony from property owners within 200 feet.

Mike Pisauro, attorney representing Diana Evans, informed the Board that with him this evening is Frank Montgomery from Traffic Planning and Design.

Frank Montgomery was sworn in by David Pierce, Boards attorney. Mr. Montgomery is from Traffic Planning and Design, Inc., 2 Riverside Drive, Suite 506, Camden, N.J.

Frank Montgomery stated his education, military experience and his specialty. He is a licensed professional engineer in N.J. and Pa. and a certified traffic engineer.

Mike Pisauro – would like to present Frank Montgomery as an expert.

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

David Pierce asked for a hard copy of the C.V. and marked it **EXHIBIT – O-4.**

Frank Montgomery informed the Board that he was retained by Diana Evans to review the applicants traffic study. Mr. Montgomery conducted his own traffic report, dated June 12, 2013. Marked **EXHIBIT O-5.** He stated that he reviewed the information submitted by McDonough & Rea and review letters submitted by the townships consultants, visited the site and reviewed the site plan. He stated that his report doesn't cover everything because some information came up in testimony at the last few hearings but he will provide testimony on some additional work that he's done. **EXHIBIT O-5** – one of the things that came up was the parking, no parking on the proposed site, parking is proposed off site. If that parking were to go away or move, a study would need to be done to determine if there would be any additional impacts to the north on Route 29 or if it would be put on the site. The traffic concerns and looking at the McDonough & Rea study stated that the traffic would be reduced- he doesn't disagree with that statement down at the intersection of the boat launch and the roller rink, but where he does disagree is where the driveway is proposed. Currently, there is no bus traffic that he is aware of at that intersection, but what they are proposing there will be all the bus traffic at that intersection. The reduction will be at the roller rink and the full brunt of it will be further down to the north of Route 29. He believes it was an oversight that they didn't do a traffic study on the driveway that's directly across from the proposed driveway because the turning movements of the buses in and out will impact how people ingress and egress – five residential properties are back there. He prepared two diagrams showing the impact to his clients driveway. The diagrams were utilized from the site plan submitted in June and since have been revised to address feedback from the first hearing. **EXHIBIT O-6- Truck Turning Plan.** As you look at this drawing-the north would be to the right of the plan and the river to the top of the plan. It shows a green car turning into the driveway that's opposite to the proposed site traveling southbound on Route 29 and turning left into the site. The blue and red vehicle is a bus that would make a left turn into the site.

Mr. Hoffman questioned a statement that was made by Frank Montgomery stating that the green car would make a left into the parcel.

Frank Montgomery stated that he misspoke and meant to say that its a vehicle turning into the driveway that's opposite the subject property. Then you have a bus that would be traveling northbound from the roller rink and turning left into the parcel. The improvements that were made did help and addressed concerns of the buses hitting people, but there are some areas shown on **EXHIBIT O-5** that if you look at the proposed topsoil stockpile, in the middle of the turnaround area, it shows a part where the wheel and the exterior of the bus traverses over the area in the middle and this assumes that the bus driver holds the curb where the patrons are getting off. If they hold it tight to the curb they will run over this area. Another thing not taken into consideration on the site plan is the bus's mirror that sticks out from the bus and could be from six to twelve inches out– that's the yellow line that you see sticking out. It's a concern if its sticking out. Vehicles turning left in to the parcel and opposite the subject parcel and a bus queued waiting to turn in and southbound traffic would be blocked. It's not a capacity issue but it is a safety and operational issue. These driveways are the least safe. To create this Exhibit he used a program called **AASHTO** (American Association of State Highway Transportation Officials). He used the site plan that was prepared by the applicant and overlaid the **AASHTO** data. The bus (**EXHIBIT O-6**) is 35.80 feet long and is a foot and a half less than what the applicants bus is, so it would be longer than what's shown. The impact is that it would cause issues with people turning in and out of the driveway from Daniel Bray Highway. During testimony McDonough & Rea stated that adjustments were made. Frank Montgomery stated seasonal adjustments are an approved way of adjusting traffic, but a seasonal adjustment may not pick up the traffic when the business is not operating. The best way to get accurate data is for the count to be performed during the summer months. It has been stated that the current operation will generate 360 patrons an hour, and you don't know from which direction the clients will come from - the north or the south and the traffic wasn't counted when the site is open. A trip reduction by using this site could result in a significant reduction compared to what is occurring now. Frank Montgomery visited the site, as did the applicants' planner, and found that a section was 5 feet and then opened up wider the closer you got to the boat launch. Industry standards would be eight to ten feet and the stretch that would receive the most impact coming from the site to the trail is five to six feet and then gets wider. The **AASHTO** manual calls for a width of 30 inches for bicyclists and they request 48 inches to be able to operate should they need to shift to either side. The **FHA** (Federal Highway Administration) uses a two foot width for pedestrians. So, if you're carrying a tube, kayak etc. the trail is undersized for that type of traffic. The number of driveways was discussed but not by the site engineer. They felt that this is two driveways, and **NJDOT** requires one. They (**NJDOT**) only permits a maximum of a 50 foot opening, and both driveways exceed that and this is from the **NJDOT** access code. This plan doesn't comply. If it is two driveways they need to be a minimum of 200 feet and it doesn't meet that standard. (**EXHIBIT O-5**) Not in his report is the gate on the site and the **NJDOT** requires any gate to be 50 feet from the curb line and the proposed is 30 feet and would need to be moved an additional 20 feet to comply.

Mike Pisauro – Thank you- Are there any questions or cross-examination?

Mr. Hoffman – Nothing from the applicant. Thank you.

M.L. Haring – Any questions from the Board?

D. Pierce – Do you have a hard copy of the report.

Mike Pisauro – Yes, I do.

Mr. Hoffman asked if it would be possible to transfer the electronic documents, used as exhibits this evening, to his disk tonight.

M.L. Haring – Yes.

Barry Chalofsky, sworn in, stated his education and experience.

M.L. Haring – the Board accepts Mr. Chalofsky as an expert.

Barry Chalofsky stated that he prepared a report for this project. He visited the site on two occasions and did an investigation of the surrounding area. He reviewed the Zoning Ordinance, Master Plan, Zoning map, other planning documents, reports and attended three hearings. The introductory slide shows a picture of the back of the property, in question, facing the Delaware River. He is going to give a quick overview, talk about the Master Plan and Zoning Ordinance. He will discuss view-shed and sense of place and how it relates to this property. He's going to introduce the concept of scenic byway and the proposed impacts and give a rebuttal of the positive criteria presented by the applicants' planner and discuss the negative criteria and give his professional conclusion. This project takes place in the AR-2 Zone. The first two slides discuss some elements in the Master Plan- land use element and conservation element. He wanted to draw the Boards attention to one of the goals of the AR-2 Zone, **"maintain the vitality and viability of critical habitat areas and the natural resource conservation and environmental protection objectives of this plan."** One of the primary goals stated in the Master Plan land use element is, **"natural resource area protection which includes forests and stream corridors"**. This project does not meet the goals or criteria of the Master Plan and in no way does it enhance the scenic vista or natural resource protection of the Delaware River or adjacent property owners to the river. It's out of place with what a person would normally want to see when traveling to the Delaware River. The Board is aware that this use is not a permitted use and it doesn't support any of the permitted uses in the AR-2 Zone. The question before this Board is, if it's appropriate to grant a variance for an activity that is neither a permitted use nor something that would support a permitted use. This commercial use does not support the types of uses permitted in the AR-2 Zone. The Master Plan calls for, **"To provide for a proactive approach to physical design and community planning so that adjacent land uses function compatibly and harmoniously in terms of scale and location."** **"To maintain the rural character of King wood Township using design options such as minimizing impervious cover, protecting open space, and encouraging agricultural uses."** **"To recognize that roadways are public lands that deserve aesthetic design consideration as well as efficient movement of vehicles, and to carefully plan the gateway entrances to the Township because they represent a visitors first impression of the Township."** The goal stated: **"Improve the Townships environmental, social, and economic sustainability by selecting appropriate sites for development."** He believes that the township in developing the Master Plan didn't envision this type of use in this location. It's not in the Master Plan, not in the Master Plan revision in 2012, not consistent with the development of an area next to a state park and the Delaware River. This high intensity commercial use in a small area is not what the township had in mind in looking for environmental protection of open space and a tubing transfer station is not what the Township Master Planners had in mind. Two definitions found in a commonly used book **"The New Illustrated Book of Development Definitions"** used in the state by Planning and Zoning Boards. One is: **"Viewshed" an elevated or unobstructed location, position or area that permits an unhindered panoramic vista of particular interest or pleasure or unique view to or from a particular point.** **"Sense of Place" the characteristics of an area that make it readily recognizable as being unique and different from its surroundings and having special character and familiarity.** In the Kingwood Master Plan the Goal is: **"Identify and protect undisturbed hillside, ridge-line, and steep slope views and vistas, particularly the Delaware River Corridor, open fields, forests, and historic landscapes, for the scenic enjoyment of all NJ citizens and to maintain the rural quality of the Township."** His client, Ms. Evans, has property directly across from this parcel and there are five other residences in total on the driveway to his clients' property that have a scenic vista of the Delaware River. The applicants property is not in pristine condition but you'll see from the pictures that it's not all that bad. This high intensive commercial use buffered with bushes, a tarp with tubes and yellow buses is not anyone's definition of a scenic view-shed or sense of place. Is this really the type of use that you,

Kingwood Township, would associate with the rural character of the community? The NJDOT developed a program called - **“Scenic Byways” Scenic byways highlight transportation corridors that have outstanding scenic, natural, recreational, cultural, historic or archaeological significance. They represent the uniqueness and diversity of the state and together the byways tell stories about New Jerseys' history, heritage, recreational opportunities and beauty.”** **“Route 29 has been designated by the State as a Scenic Byway, in 1996, offers spectacular views of the Delaware River and travels through the historic riverside towns of Titusville, Lambertville, Stockton and Raven Rock ending at the southern limit of Frenchtown. Route 29 is located on the east side of the Delaware River, parallel to the Delaware and Raritan feeder canal for most of its length.”** A significant portion of the Delaware River is designated as a wild and scenic river and this was done for a reason because the people of the state and the government feel that this is an area that is supposed to be preserved for its scenic and natural value. He described the site location from the picture submitted noting the subject property and his clients' property. There is no way that his client and the residents on that street could avoid looking at the parcel. There are skateboarders that use the concrete pad illegally and the applicant has chosen not to ask them to leave. A few feet down the road is the view from the driveway unobstructed and this is the kind of view that one would expect to see when you're looking at the buffer areas to the river; not tubes, buses and thousands of recreational users. **Potential Wetlands Impact** – The Kingwood Environmental Commission identified wetlands adjacent to the Delaware River. The applicants' environmental consultant did not. He verified the work by **KTEC** (Kingwood Township Environmental Commission) and spoke to people from the DEP who verified that the mapping is accurate. The wetlands to the west of the property is more significant in terms of the buffer potential than the wetlands buffer requirements to the north. The reason the buffer represents a potential exceptional resource is because of the potential presence of the Cobra Clubtail and Great Blue Heron that are endangered species that may exist adjacent to the property or on the applicants' property. None exist on the wetlands to the north, but are on the wetlands to the west according to the KTEC. There may be buffer requirements due to the potential presence of these endangered species, and those buffer requirements would be 150 feet and would go significantly into the applicants property – possibly 50% of the applicants property could be in this buffer. The Concession Agreement and the applicants own studies indicate up to 70,000 visitors per season. Six buses per hour per day, from 9am to 4pm, 42 buses per day, 60 visitors per bus, 360 visitors per hour, 2,520 visitors per day. Picture at the roller rink showing actual buses was included in testimony packet. What is the impact of 70,000 visitors per season on a property a little over a half an acre, a property that is not much more than a single family dwelling. You heard the impact of vehicular traffic and now there will be a significant number of buses that weren't presently at this location. The buses were at a different location and now you will be introducing the buses to a location that didn't exist before. The Board needs to take into account that the buses are a new impact on this property and the traffic on Route 29, as well as the egress and ingress for the driveway and the five households across from the parcel. The applicant has said that they won't discuss on site parking but the Kingwood Zoning Ordinance says that each use must have a parking space and the Board talked about the fact that there are no parking spaces proposed. Barry Chalofsky stated that it's the Boards responsibility to ensure that there is adequate parking and that the parking is not going to impact the other residents of the Township. We know that there is off site parking at a different location but the applicant has stated that the parking can be anywhere in the township and doesn't have to be at that location. The Zoning Ordinance is very clear that the parking goes with the use and is part and parcel of the use. He feels that it's pretty hard to see how you're not going to have environmental impacts and noise impacts especially for his client and the other neighbors. The applicant has stated that they aren't going to have trash and litter but it's pretty hard to believe that 70,000 people aren't going to produce litter. It's going to require a lot of work for the applicant to ensure that trash and litter doesn't get into the river, the buffer area, and on Route 29. It will be impossible for them to be on the site and not impact the environment, vegetation, potential of rare and endangered species and habitat impacts. It will be difficult for existing users of the trail, who go from one area of the park to another, during the course of the season. The DEP

wouldn't allow a use to have two porta-potties. He suggests that the Health Department be notified to ensure that it's in compliance with the health code. It was discussed on how the porta potties will be serviced, the landscaping and maintenance with no parking on the parcel. He can't state that property values will change because he's not an appraiser but as a planner it's hard to understand how this intensive use wouldn't impact property values. Next was shown a picture of the tubes stacked which Barry Chalofsky stated would be hard for him to consider this to be a scenic vista. Next was shown a picture of an existing bus at the roller rink site. He went through the applicants' planner special reasons and pointed out that general welfare is not special reasons. Positive Criteria Rebuttal: General Welfare - **“ I do not believe that this project promotes the general welfare of the community. The “general welfare” concept has typically been applied to inherently beneficial uses which is not the case with this application. Given that is purely a commercial enterprise I do not see a benefit to the community. The jobs and recreational opportunities are already in place with the existing operation. The proposed operation does not add jobs and in fact will likely interfere with the general welfare of nearby residents. It is certainly not clear how the community's general welfare benefits from this application.”** Safety - **“Similarly safety may likely be impacted due to the overuse of this property and the potential impacts to both residents and users of the park.”** Special Purpose G - **“The language (Lower Delaware Management Plan) cited by Mr. Bolan speaks to “recreational activities that are environmentally suited to protecting the river and habitat” - I don't believe that the intention was to provide 70,000 visitors to a .67 acre lot, as well as an in-water food stand, as activities that will protect the river and habitat. In addition, Mr. Bolan stated that the LDP states, “State, county, municipal and private entities should provide additional access sites to the river...” - this project does not provide any additional access.”** Special Purpose H - **“ The language of the MLUL speaks to the “promotion” of free flow of traffic” - our traffic engineer will testify that this location is not promoting the free flow of traffic and may, in fact, result in an increased delay along Route 29, as well as affecting the ingress and egress of the residential houses along the east side of Route 29 (clients' property). In fact, since the applicant refuses to address the issue of off-site parking it is unclear what the ultimate traffic impacts will be to the community. Purpose M - “The language of the MLUL speaks to the coordination of private and public entities in order to “lessen the cost of such development and to the more efficient use of land.” First the Concession Agreement is nothing more than a contract to provide services – it is not a coordination of entities. It is not clear how this agreement either lessens the cost of land nor makes this property more efficient.” “I do not believe that the applicant has presented sufficient special reasons to approve this project.”** Negative Criteria: **“The Municipal Land Use Law authorizes local zoning boards to grant a use variance where: (1) “special reasons” exist for the variance (the positive criteria); and (2) the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purposes of the zone plan and zoning ordinance(the negative criteria).”** Inconsistent with Master Plan and Zoning Ordinance: **“Project does not “maintain the vitality and viability of critical habitat areas and the natural resource conservation and environmental protection objectives of this plan.” “Project impacts “narrow rural road system with traffic volume & capacity limitations” and does not provide “natural resource area [protection including forests and stream corridors.” “Project is inconsistent with the types of development associated with this zoning – it does not support the uses of the zone nor does it provide services for the areas of the zone.” “Project is inconsistent with objectives for Community Design, Circulation, Sustainability and Scenic Views and Vistas.” “Placing a high density commercial use across from existing, low density residential homes is not an appropriate planning design.” It's not in keeping with the spirit of the MLUL and negative criteria.** Comments from King wood Township Planner's report: **“The subject property can be characterized as a blighting influence on the landscape. The application states that proposed improvements “will beautify the existing property,” however we question whether the proposed chain link fencing and stored equipment will substantially improve the appearance of the site, particularly with deferred landscape plantings. It**

is questionable as to whether a 75' x 75' chain link compound on a concrete slab, a tent and a driveway are attractive improvements compatible with the Scenic Byway. The proposed 10 evergreen shrubs planted along a distance of 120' do not appear to provide an effective visual buffer to screen the view of these improvements from Route 29. Likewise, the buffer to be planted between the west side of the property and the walking path in the State Park does not seem to be an effective visual screen. “ “ Residential properties across Route 29 have a commanding view of the site from their hillside locations. The potential negative visual impact of proposed improvements, bus traffic and crowds of people that will be visible to the adjoining neighbors should also be considered by the Board.” When you stand on Ms. Evans' property and look down the street, sit in her living room and look out the window seeing 70,000 people, six buses an hour, people carrying tubes, kayaks etc this is not what you think of as a scenic vista and it's not the kind of visual impact that we want the residents to have. Substantial detriment to public good: “Negative visual (aesthetic) and economic impact on neighboring residences and public good; Inconsistent with community's “Sense of Place;” Impacts from vehicular traffic; Impacts from pedestrian traffic; Impacts from noise, trash/litter, and potential environmental degradation; Impacts to other park and trail users; Inconsistent with scenic area and Rt 29 “first impression.” Conclusion: “In context of: the Master Plan, Zoning Ordinance, View shed/Sense of Place, State Scenic Byway Designation, Environmental Concerns and Detrimental Impacts – this application does not meet the Positive and Negative Criteria.”

David Pierce – this PowerPoint presentation is marked **EXHIBIT 0-7**.

M.L. Haring – any questions from the Board?

Mr. Hoffman asked if he could ask a couple of questions of the witness.

M.L. Haring – Yes.

Mr. Hoffman – Mr. Chalofsky, if the applicant built a one story single family dwelling, would Ms. Evans view of the river be compromised or constrained in any way?

Barry Chalofsky – if planned correctly and with natural vegetation, there would be some impact but not the same impact.

Mr. Hoffman - you would agree that this parcel is undersized.

Barry Chalofsky – definitely.

Mr. Hoffman – there is no building envelope.

Barry Chalofsky – not in the present zoning ordinance.

Mr. Hoffman – so we would be constricted as to what we could place on the parcel in terms of a single family residence?

Barry Chalofsky – Yes.

Mr. Hoffman – There's not much room to build a house on that parcel and that's if we could build one in the first place, correct?

Barry Chalofsky – Yes, but there are other uses consistent with the zone that could be put there.

Mr. Hoffman – I understand but one of the uses is a single family residence and that would affect your clients view of the Delaware River, correct?

Barry Chalofsky – not in the same manner.

Mr. Hoffman – If a two story dwelling was built, it would more so affect your clients view, correct?

Barry Chalofsky – correct.

Mr. Hoffman - if the applicant developed this parcel with a dwelling could he maintain recreational equipment on that property like river tubes and kayaks?

Barry Chalofsky – thousands of them?

Mr. Hoffman – my question was river tubes and kayaks- not numerosity.

Barry Chalofsky – the applicant could have a reasonable number of tubes and kayaks.

Mr. Hoffman – and they could park vehicles on the parcel, correct?

Barry Chalofsky – a reasonable number in accordance with the zoning.

Mr. Hoffman – do you know the number of individuals that recreate in the river from lands of Kingwood Township each season?

Barry Chalofsky – no.

Mr. Hoffman – you understand the term recreate which means to use the river to swim, boat, tube and kayak in it, correct?

Barry Chalofsky – I understand.

Mr. Hoffman – in giving your opinion tonight, did you rely on traditional interpretations of the MLUL to form your opinion?

Barry Chalofsky – In some cases.

Mr. Hoffman – what judicial opinions have you relied on?

Barry Chalofsky – Interpretations from Cox.

Mr. Hoffman – so you do look at judicial interpretations of the MLUL to form your opinions tonight?

Barry Chalofsky – I look at the language in the document that most planners use in the state of NJ and I didn't cite any specific cases.

Mr. Hoffman – the document that you're referring to is in this book, correct?

Barry Chalofsky – yes, my copy is a little older.

David Pierce – for the record, the book you're referring to is **New Jersey Zoning and Land Use Administration by William Cox?**

Barry Chalofsky – yes.

Mr. Hoffman – would you agree that the parcel referred to as the roller rink is off tract compared to the subject property?

Mike Pisauro – I'm not sure I follow your question.

Mr. Hoffman – does your expert understand it?

Barry Chalofsky - the roller rink property is not adjacent to the property in question.

Mr. Hoffman – do you know what the definition of off tract is under the MLUL?

Barry Chalofsky – I think so, but if you want you can go ahead and tell me.

Mr. Hoffman – no. Do you know?

Barry Chalofsky – not without looking it up.

Mr. Hoffman -do you have the Cox book with you?

Barry Chalofsky – my version of it.

Mr. Hoffman – do you want to look in there, in the back at the definitions, 55:D-5?

Barry Chalofsky – that's similar to what I just said.

Mr. Hoffman – is it fair to say that off tract means it's not located on the property which is the subject of this application, or on the closest half of the abutting street or right-of-way? That's the definition, correct?

Barry Chalofsky – correct.

Mr. Hoffman – would you agree that the roller rink is off tract compared to the subject parcel sought to be varied before this Board?

Barry Chalofsky – correct.

Mr. Hoffman – would you agree that the applicant could bring patrons to the parcel from the off tract site and outside the Kingwood Township municipality?

Barry Chalofsky – I never said he couldn't. I said that the Board needed to take into consideration from where the traffic is coming from.

Mr. Hoffman – you would agree that the traffic-the busing of individuals to this parcel could occur off

tract and outside of the municipality of Kingwood, correct?

Barry Chalofsky – without looking it up further I would have to say yes, but I would have to look up the case law to see if it supports that. I understand your position with regard to off tract, but what I'm saying to the Board is that the use itself doesn't exist in a vacuum. You have to consider what the use is and it's one thing to bring people in and another thing to bring people into the property and not tell the town where these people are coming from, when it relates to the parking on the property or the lack of.

Mr. Hoffman – you were here for the testimony of my traffic expert, correct?

Barry Chalofsky – yes.

Mr. Hoffman – do you remember his name?

Barry Chalofsky – no.

Mr. Hoffman – do you remember the name of the company that he works for?

Barry Chalofsky – no.

Mr. Hoffman – in your presentation you made the comment that “off site parking not adequately defined or understood.” Can you explain what you mean by that?

Barry Chalofsky – when I was at the hearing, I believe it was you that said it doesn't matter to this particular application where the off site parking is, it's not subject to this application, correct?

Mr. Hoffman – I'm asking for an explanation of your opinion stated in your presentation.

Barry Chalofsky – my explanation is that I don't see how this Board can access whether there is appropriate parking for the number of people on this property, the impacts associated with the people on this property, if they have no idea where these people are coming from in terms of where they're parking.

Mr. Hoffman – we presented testimony from the traffic expert who discussed the impacts of this proposed varied use on Route 29, correct?

Barry Chalofsky – yes, but you didn't look at the parking at this particular site and the impact. It was said there would be a reduced amount of traffic from the roller rink site.

Mr. Hoffman – I disagree with your characterization. Can you tell me how many porta potties are presently at the boat ramp maintained by the state near the boat ramp?

Barry Chalofsky – not sure.

Mr. Hoffman – did you walk the site and the area surrounding the site?

Barry Chalofsky – I walked the site, trail, trail down to the boat ramp and the boat ramp, but I didn't count the porta potties.

Mr. Hoffman – did you walk the site during the summer months?

Barry Chalofsky – I was there in May and June but when I went around the river was close to flooding and the number of recreational tubers was at a significant reduction at that time.

Mr. Hoffman – would it be remarkable to know that there's only one porta potty at the boat ramp?

Barry Chalofsky – I don't believe that-I worked for the DEP for 35 years. They're allowing the use to occur, but they are not supporting it and there's the difference. You're actively supporting this use and it's a passive use as far as the DEP is concerned.

Mr. Hoffman – The DEP is an agency of the State of NJ, correct?

Barry Chalofsky – The NJDEP, and the tubing that's going on is a passive use as far as they are concerned. This use is not maintained by the park, so they're not going to provide adequate provisions.

Mr. Hoffman – the NJDEP is an agency of the State of NJ, correct?

Barry Chalofsky – yes.

Mr. Hoffman – who are the parties to the Concession Agreement that you reviewed?

Barry Chalofsky – the DEP and your client.

Mr. Hoffman – are high intensity commercial uses ever placed across from residential homes?

Barry Chalofsky – certainly.

Mr. Hoffman – are you being compensated for your services to Ms. Evans?

Barry Chalofsky – yes.

Mr. Hoffman – can you tell me your hourly rate.

Barry Chalofsky - \$150 an hour.

Mr. Hoffman – nothing further.

Mike Pisauro – does the Board have any questions?

M.L. Haring – no, is there anyone in the audience who has any questions of Mr. Chalofsky?

Mike Pisauro – I have a few redirect.

Mike Pisauro- Mr. Chalofsky, you just had an exchange of questioning regarding off tract and parking. Is one of the reasons that the off site parking and where it's coming from and its impact is important because the Zoning Ordinance requires the applicant to deal with on site parking and prove that there is off site parking?

Barry Chalofsky – yes, as I've said before the Zoning Ordinance says that each use must have a space.

Mr. Hoffman – on site, correct?

Barry Chalofsky – on site.

Mr. Hoffman – the applicant could ask for a variance or waiver relative to the parking requirements, correct?

Barry Chalofsky – yes, but the variance has to be reasonably proportional to the use in question. If we're talking about 70,000 people and maintenance staff and people who work for Mr. Crance, that would all have to be taken into consideration and as of right now no parking is provided on the site.

Mr. Hoffman – would you agree with me by the definition of the municipality's ordinance that one could park on a driveway if a variance was granted by this Board? Take a look at subsection (E) of 132-53.

Barry Chalofsky – It says, “**No parking of vehicles shall be permitted in fire lanes, streets, driveways, aisles, sidewalks or turning areas.**”

Mr. Hoffman – this Board does have the power to grant a variance to allow parking on a driveway, correct?

Barry Chalofsky – the Board has the power to grant a variance from any component of the Zoning Ordinance.

Mr. Hoffman – including against the prohibition of parking on the driveway?

Barry Chalofsky – certainly, but the question is is that a reasonable variance.

C. McBride – has the applicant asked for parking on the lot?

Mr. Hoffman – are you directing that.....

C. McBride – I'm directing it to you, yes. Has the applicant requested parking on this parcel?

Mr. Hoffman – the conversation I had with Mr. C.....

C. McBride – yes or not? Is the current application requesting parking on this parcel?

Mr. Hoffman – yes, parking on the driveway by way of variance, premised on a conversation with Mr. Pierce this morning.

C. McBride – excuse me? The application that we have on record does not have the request. You've requested no parking on there.

Mr. Hoffman – based on statements made by Mr. Pierce at the last hearing and the conversation this morning. When we rebut we're certainly going to concede to the requirement of a variance in terms of being able to park on a driveway and a waiver as to the minimum number of parking spots that are required by the ordinance.

M.L. Haring – David, do you want to explain that a little?

D. Pierce – I did have a phone conversation with Mr. Hoffman this morning in which he indicated that they were going to concede that they would request a parking variance. He didn't provide me with any

of the details of the request. Mr. McBride, as you've observed, they haven't yet made that concession on the record prior to this colloquy.

M.L. Haring – they are within their right to do so?

D. Pierce – yes.

Mr. Hoffman – thank you.

Mike PISAURO – I would like to stop the opposition testimony and reserve some time to respond to anything put on by the applicant.

Mr. Hoffman – Madam Chair and Mr. Pierce, as a matter of procedure I anticipate that we're going to go beyond tonight but not beyond another meeting. The vision of the burden of proof here is going back and forth will be we'll put on our case and the opposition and other objectors can come and testify and then we will rebut. He doesn't know if they'll go back and forth until they boil down to one single statement. He doesn't know how the Board wants to deal with this situation. He would prefer to have some sort of closure.

D. Pierce – he would prefer to have closure as well, but thinks it would be unfair to the objectors to have testimony, any professional testimony that you intend to present relating to the parking variance, occur after they have closed and don't have an opportunity to present rebuttal testimony or objecting to that. To the extent that you put on new testimony relating to the parking variance, he believes that the objectors would have the opportunity to address that in their own professional testimony.

Mr. Hoffman – understood, so if that's the way we're narrowing the issue, he would appreciate the opportunity of the objector to comment on further expert testimony from us on the issue of a waiver as to the minimum number of parking spaces required and a variance as to the ability to park on a driveway which is prohibited.

D. Pierce – the only dispute he has with what Mr. Hoffman said is the characterization of anything related to that as a waiver. You would be requesting a variance from the parking- the parking requirements under the ordinance and that includes the number of spaces, location and everything related to that. David Pierce doesn't believe there is any basis to characterize that relief as a waiver. It's a variance.

Mr. Hoffman – I'll use your semantics.

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

M.L. Haring – called the meeting back to order.

M.L. Haring – Mr. Lerch please come forward with your presentation.

D. Pierce – just a reminder that you were sworn in at the last meeting.

Randy Lerch informed the Board that he resides at 2994 Daniel Bray Highway since 1995. He identified the location of his property and the roller rink from an aerial shot submitted in his presentation.

C. McBride – asked Randy Lerch what the lot number of his property is.

Randy Lerch – Block 14, Lot 15 or Block 15, Lot 14.

Randy Lerch – the aerial shot is just to give you a perspective of where he's coming from and his experiences living there. He quoted from the June 12 meeting minutes as follows: **“The parcel before the Board tonight will trigger major efficiency in terms of traffic movements along the highway.” “...by allowing the equipment to be stored where the customers are putting into the river which will increase the capacity of the buses by a 100%.. So where now you can get only 30 people from the Roller Rink per bus, this proposal will allow you to get 60 people from the Roller Rink per bus, a 100% increase and efficiency a 50% cutting the bus traffic in half basically on the highway.”** He doesn't see that whatsoever. The buses run from the roller rink up here, down the driveway and up to a parking area located 1 mile north on Route 29 called Design Plan where cars are parked. When parking backs up at the roller rink they park people there. Mr. Crance has permission to do that. The buses leave the roller rink, go to Design Plan and pick customers up and take them back to the roller rink. He feels that no bus traffic will be reduced by this new lot. The other area that the buses traverse for DRT is from the roller rink down Route 29 and south to a pick up point. After they are finished tubing they go back to the roller rink with their equipment. This bus traffic will not be reduced at all by this expansion. Another area that the buses traverse to from the roller rink is approximately 1-1/2 miles south to Fairview Road where customers, who desire a shorter trip, are dropped off with the equipment they have rented. These bus trips will not be affected by this variance and use of his property. There will be no bus reduction. He also claims that they'll be able to transport 30 people and/or 60 people per bus and that's bologna. The procedure is once the customers park at the roller rink they need to go to the staging area where they have to go to the stand and read, fill out and sign a waiver form. Every customer needs to do this before the trip. Next, they have to pay, go up to the register, pay for their tubes, raft or whatever they may be renting and once that's done they can go to the buses. From what he's saying on an average of 30 seconds per person, that would be 30 minutes for a busload of 60 people there is no way that can be done. Now he doesn't service 30 people per bus on a daily basis. I know – I live right there. People are not going to sit on a bus in 95 degree weather with no AC. At the June 12<sup>th</sup> meeting the traffic analyst presented a grading system- Grade A and Grade B for turning onto this parcel of property which was based on surveys done in May and based on the Highway Capacity Manual to what's suppose to occur at high times during June, July, August, and September. Picture displayed showing a typical weekend day, on a Saturday afternoon around 12:30. This is what he sees at the intersection of the current end of the roller rink driveway and turning into the parking area for the boat ramp. The picture shows 4 buses at one time and was taken from his front yard looking north on Route 29. If it's only 6 buses an hour, my picture shows 4 buses, 3 that just came down to drop people off and another that's going back up to the rink.

M.L. Haring – Mr. Lerch, let me interrupt for a second so the Board can get a clarification on what we're seeing. Mr. Crance, where this white bus is turning left, is that going to be eliminated because of your property that's north of here?

Mr. Crance – yes, it will be and I'm not sure if it's in this shot but behind the bus you'll see the park ranger. The public had overcrowded that lot so much that the park ranger had to come in and stop it. The buses couldn't get in so they backed up. Normally that's not what it looks like. The bus coming down the hill could be going to pick people up and I don't know if that bus (shown on picture) is dropping people off.

M.L. Haring – that's a little more than I asked for-the question is will that left turn be eliminated because of your property to the north.

Mr. Crance – yes.

Randy Lerch – I can add to that-his property is just 300 yards north past that where the 3 telephone poles are, so they'll be moving 300 yards north and won't be turning 50 yards north of this driveway. What's going to happen moving this up 300 yards is that it's going to expand that area of buses moving 20 to 25 miles an hour down the highway where the traffic is going 50, 55 or 60 miles an hour. The speed limit is 55 and they have buses pulling out and turning right in front of cars in this section and now it's going to be spread out over 300 yards with the buses pulling in and out and traveling a slow speed along that 300 yards. This area was given a Grade A and a Grade B for buses turning. This photo is not a Monday or Tuesday, it's a Friday, Saturday or Sunday and this is what he sees every weekend. Another photo shows 2 buses coming from the pickup point with a bus parked on the shoulder to let some cars pass. You can see the tubes in the back of the bus on the left and he's waiting for the buses to go up the hill first off of Route 29. The next photo shows no buses but it does show the traffic that backs up from the roller rink driveway because of insufficient off site parking at the rink. Moving 300 yards up the road is not going to address this whatsoever. Accidents hasn't been addressed at all. Next photo, looking south to the right of the entrance to the boat ramp shows a bus coming down the roller rink driveway and a motorcycle accident that happened when a car pulled out in front of the motorcycle coming down Route 29. Fortunately the motorcycle driver was not injured. In the 18 years that he lived here he's only seen one accident on this stretch of highway in the front of his house. The next photo is another accident in the same spot only two weeks later. Unfortunately this driver was hurt. This happened because of cars backing down and cars stopping on the highway. This is not going away because he's moved 300 yards up the road- it's only going to get worse. He also has issues with cars going north and south turning around in his driveway because they've missed the turn going up to the rink. What will happen when they see buses turning into the new area proposed? More confusion because people are going to wonder where to park. There's no signage designating the roller rink for parking. The only way to alleviate this is more signage along Route 29 and that's not what he wants to see in his front yard. Next photo shows the driveway going up to the roller rink and the cars backed up all the way down the driveway. This is a private driveway shared by the roller rink. His neighbor, Bobby and Rebecca, this is their driveway. The driveway is also shared by Russell Pinkerton who has a farm up above. The driveway goes across what is owned by my neighbor and this is what he has to see. Next photo shows his (Randy Leach) backyard and what he sees every weekend. If he wanted to sell his house this is what people would see on summer weekends. Who would want to buy his house if they see this. Next photos show the parking along Route 29 when he runs out of parking at the roller rink and Design Plan. This was stopped by the DEP so it no longer happens. The State Police dedicated two officers per weekend to patrol this area because of what was happening. He felt that Barry Chayefsky covered the negative criteria and the intent and purpose he agrees 100% with Barry Chayefsky in that it's zoned residential, is next to a state park and is designated wild and scenic. This proposed staging area with hundreds of tubes is not what this township is about and is not why he moved to this property. He moved to the property because the state park was there. Detriment to the public good-he showed photos of his backyard and what happens there with the cars down the rink driveway and on Route 29. How can this be good for him- he can't sell his house in the summer and that's his detriment. He had a conversation with John Barczyk, Zoning Officer, and explained to him what he showed here tonight of what's happening from the roller rink down. He also asked him about the activities at the roller rink with regard to the off site parking etc. My neighbors and I made a OPRA request for any variances that were issued for the operation at the roller rink and the only response was for the variance granted to the roller rink in 1974 They have a variance to operate the roller rink and the roller rink only. What's happening at the roller rink is in total violation of what's been granted. He knows the owner of the roller rink approached the Planning Board at its last meeting asking what she would need to do to have DRT continue to have their operation on her property properly. She was given the information on what she needed to apply for a variance to allow that business to operate on her property. How can we allow a business to continue to operate when we don't know if it's existing legally or if it will even be there next spring. In conversation with Mr. Barczyk they've been told that something has to change before they can open again next spring.

M.L. Haring – any Board questions for Mr. Lerch? Anyone from the audience have questions for Mr. Lerch?

Mr. Hoffman – Mr. Lerch could you go back to the slide that depicted the 2 yellow buses and the 2 white buses that Madam Chair had a specific question on? To the left of this picture, the ability of buses to queue on that parcel off Route 29, how many can sit there at any given time?

Randy Lerch – I'm not sure what parcel you are talking about.

Mr. Hoffman – looking to the left side of this picture, the Delaware side, how many buses can park off Route 29 on that property that's between Route 29 and the Delaware?

Randy Lerch – legally?

Mr. Hoffman – at one time.

Randy Lerch – legally?

Mr. Hoffman – correct.

Randy Lerch – none.

Mr. Hoffman – do you understand that on the parcel we're asking to be varied, we're going to create a half moon driveway that's going to allow for three buses at one time to queue, correct?

Randy Lerch – certainly.

Mr. Hoffman – do you recall that we are only going to bring three buses at a time to the property to park in the half moon driveway at any given time?

Randy Lerch – yes.

C. McBride – Mr. Pierce, when the original testimony was made of the traffic planner from the applicant, there was some information that wasn't made available at that time that was brought up by Mr. Lerch's testimony. Can we address that to the applicant now?

D. Pierce – yes.

C. McBride – In the original traffic analysis that was presented, the applicant stated that the additional traffic would be from taking people from the site up at the rink and down to the parcel in question. There was no indication that there was another area outside there. Is the applicant still intending to use the parcel in Frenchtown as a drop off site also?

D. Pierce – that site would be a pick up and not a drop off.

C. McBride – whatever. There will be cars parked there at this other location that Mr. Lerch has shown in about the 25<sup>th</sup> slide. This location was never referenced in the traffic assessment that the expert presented.

Mr. Hoffman – so I'm clear on your question, you're asking based on the proposed variance, will we

continue to use this parcel to park at as this witness has testified to?

C. McBride – correct.

Mr. Hardcastle – the parking may or may not continue there, but certainly no buses will originate from that lot. Depending on the need, we're not considering not using that location, but what will not happen is buses originating from that lot and going to the subjects parcel.

C. McBride – were those buses accounted for? Because now they're going to make several more trips.

Mr. Hoffman – their traffic expert took a count and used figures from Route 29 which would include all bus traffic.

C. McBride – I'm sorry but I will argue that he didn't because the survey was done in April and not while any bus traffic was there. Since we've now expanded where the bus traffic is going, he's placing more and more doubt that the traffic study is even accurate.

Mr. Hoffman – the data he used was extrapolated based on data from other sources. It has to take into consideration all traffic on Route 29, regardless of where it originates, inside or outside Kingwood Township, from the roller rink or from the parcel that was just referenced, or someplace else. I'm bringing back my traffic expert and he's going to have a copy of the transcript and will be asked specifically to answer your question.

A. Planer – so you're going to use that possibly for overflow parking, this other parcel, but you don't intend to have any buses go to that?

Mr. Hoffman – Mr. Hardcastle stated that the buses will not go from that parcel to the subject property.

Randy Lerch – it's called Design Plan. ( It's a lighting company)

Mr. Hoffman - the question is will the buses go from the lighting company to the subject parcel that's varied?

A. Planer – no. My question is will you have buses go to the lighting parcel from anywhere.

Mr. Crance – yes.

Mr. Hoffman – Mr. Crance can you tell the Board from the lighting company parcel the anticipated or expected bus traffic.

Mr. Crance – the Design Plan Lighting property was used three times in the summer and if we used it for overflow a small bus or van would pick those people up and bring them to the roller rink. They wouldn't be going to the property that we're seeking a variance for.

T. Ciacciarelli – like a shuttle bus?

Mr. Crance – yes.

M.L. Haring – Picture 14, the bus we see loaded with tubes, right now is it making a right hand turn to go back to the roller rink to unload for the next group of customers?

Mr. Crance – not necessarily for the next group. It is going to be offloaded and possibly used.

M.L. Haring – in that photo the bus is going to make a right turn to go back to the rink, if the variance is granted that bus will go where?

Mr. Crance – it's going to go to the property that we're looking for a variance and will unload there.

Randy Lerch – that bus has people in it as well, and the tubes.

M.L. Haring – the plan is that there will be separate buses just for the equipment to bring it back.

Mr. Crance – yes, that's why this variance is so important. In the past a comment was made that it wasn't necessary, but this is absolutely necessary and is one of the reasons why this property is extremely important to the viability of this business and its future success. The ability to operate is that we get this varied so the traffic is reduced and the equipment will be on that property. The traffic will be reduced coming back because they can remove seats and fill the buses with the tubes.

M.L. Haring – right now, at max, there will be 30 tubes and 30 people on a bus?

Mr. Crance – yes.

C. McBride - and there could be four buses, one coming back, one in the center coming from the drop off site going down to pick up tubes, one going up the driveway with people coming back and the one bus here could be two because one is filled with tubes and the other with clients. We could be seeing four buses here.

Mr. Crance – if all the buses came at once, we could, but there will be a lot less bus traffic. We're going to be doubling the size and the capacity amount and limiting it to three, they'll be monitoring how many go there and loading up the tubes. They'll be reducing the number of buses that are coming back.

Randy Lerch – how are you going to double the capacity coming back up river? How is that capacity going to be double?

Mr. Crance – because now the buses that are dropping off people to the river will be doubled so buses coming back will have the same amount of people which is double from now.

C. McBride – I understand that you're going to reduce the number of buses, the traffic analysis only looked at projections based on the number of cars from April and projected it out. There was no analysis done on the impact of the volume of buses on the road at any given point in time even though the quantity may be lower in the long run. He's (C. McBride) talking about magnitude opposed to scope.

Mr. Hoffman asked if the Board could defer these questions for the traffic expert. He will be bringing him back.

C. McBride – It's clear to say that he didn't do any modeling of the new traffic pattern.

Mr. Hoffman – I don't agree. He took into consideration all the facts placed before him. The proposal is three buses coming from the rink to the site at any given time so you don't have a backup at the site that can't accommodate more than three buses. There will be one bus transporting tubes from the pick up location. At any given time you could have four buses at one place on the roadway because presently we

have to put half patrons, half tubes on a bus. We're using parcels (state property) where you can't queue three buses at a time. The variance will make it possible to queue three buses at one time. This Board make make a condition that we only bring three buses from wherever to the site at one time.

Randy Lerch – The same amount of people and tubes are being placed in the river regardless of where the tubes sit and the same amount of people need to be brought back and it doesn't matter if they are in separate buses- 30 tubes and 30 people in a bus is no different than 60 people in one bus and the tubes in another.

Mr. Hoffman – that's not what the testimony was.

Randy Lerch – which is false.

Mr. Hoffman – from your perspective.

Randy Lerch – If you drop people off at the Fairview drop off, the people and tubes are put on the same bus.

Mr. Hoffman – I'm not going back and forth.

M.L. Haring – any other questions for Mr. Lerch?

Bob Mauer – 165 Byram Lane. The whole point of this conversation, the planning of the site, queuing at three properties, and the amount of traffic is hinged on Mr. Crance telling his experts what these buses can hold. He had an interview with his (Mr. Crance) bus driver and an empty bus can hold 30 tubes.

D. Pierce – the Chair asked if there was any questions for Mr. Lerch.

Bob Mauer – his question is for Mr. Crance and at the June meeting it was stated that a bus can hold 100 tubes. Kayaks and rafts weren't quantified and that's driving this whole efficiency on how many less buses there are. Are you willing to reconsider what a bus can hold?

Mr. Crance – with the seats out it will hold more.

Bob Mauer – was your bus driver wrong in telling me the capacity right now is 30?

Mr. Crance – yes.

Mr. Hoffman – to be clear Mr. Crance doesn't know whether that conversation was actually held. The applicant has testified that he can get more tubes in those buses.

Bob Mauer – I think we should get a bus here with 30 tubes so we can understand that 100 tubes will not fit.

M.L. Haring – Mr. Lerch, have you finished your presentation?

Randy Lerch – yes.

D. Pierce – Mr. Lerch's Powerpoint presentation is marked as **EXHIBIT O-8**

M.L. Haring – is there anyone in the audience that would like to testify?

Rebecca Goff, sworn in, stated that her husbands name is Robert Fee. Their property is Block 14, Lot 14.01 and directly abuts the roller rink and Mr. Crances tubing enterprise. The roller rink, Russ Pinkerton and Ms. Goff and Mr. Fee share a driveway of easements. They own part of the driveway and the Pinkertons own the upper half of the driveway. In considering this variance application it's relevant that you ( Board) consider the impact Mr. Crance's business is having on us and our property. They are building their dream house on their property and have been working on it for the last ten years. My husband has owned the property for approximately 35 years. They chose this area because it was quiet and beautiful with a minimal of traffic from roller rink. When Mr. Crance started his tubing business their lives changed dramatically with the tubing business next door. The buses roar up the driveway all day long and the noise is unbelievable with nonstop traffic. When the parking lot is full at the rink there are rows of cars backed all the way to Route 29 and Mr. Crance turns the left lane of the driveway into a one way road so the buses can go in and out. They can't get in or out of their driveway and in the event of an emergency, no emergency vehicles would be able to get through. The buses blow their horns coming up the wrong side of the driveway and sometimes we've made a left turn out of our driveway only to meet a bus head on and then we have to back up all the way to the roller rink. I don't believe Mr. Crance when he says there will be a decrease in bus traffic. He will clear up that space only to make more parking. The patrons from the tubing business throw bottles, cans and plastic on the driveway that washes on their property. The signs tell the patrons not to walk up the driveway so they cut through their property so they don't have to wait for a bus. This has devalued their property and they would never be able to sell because who would want to buy it with the trespassers, garbage, traffic and noise? If Mr. Crance expands his business it will only get worse. They also requested information about the original variance for the roller rink and neither Kay nor Paul Pinkerton has ever received a variance to allow the tubing company to operate and park on their property.

C. McBride – Ms. Goff can you tell me about the section of the driveway that's your property? The extent of the right-of-way that the people who use the driveway from upstream beyond your property and what is the easement and how does that work?

Rebecca Goff – the easement – by up stream you mean the farmer and the roller rink?

C. McBride – correct.

Rebecca Goff – the easement goes up the driveway but she's not sure how far, but lets say halfway and then roller rink has an easement through their property which is half way up the driveway and they have an easement on their part to get to their ( Goff) property. Russ Pinkerton, the farmer, has an easement to use the full driveway for ingress and egress.

C. McBride – do you know the details of the easement? How the easement works? What does it allow them to do on a piece of the driveway that's on your property?

Rebecca Goff – It allows them to come and go from their property across their property and that's for the roller rink and the farmer, not the tubing business.

C. McBride – was the easement in place before or after the roller rink was established?

Rebecca Goff – the property was owned by Paul Pinkerton, the father, including their property.

C. McBride – when the variance for the roller rink was granted was the easement- which came first?

M.L. Haring – I have a question that may clear this up for you. Ms. Goff- who owns the driveway? Who owns the right of way? Who has the deeded easement to that right of way? Would that go with the Pinkertons?

Rebecca Goff – the right of way belongs to the Pinkertons, their heirs and assigns.

M.L. Haring – you have the right to use it, but they are paying the taxes on that deeded right of way. Is that correct?

Rebecca Goff – I'm not sure about paying taxes.

M.L. Haring – It would be in your deed and part of your taxes, or in the deed it would say you have the right to use it.

Mr. Fee – we own it and pay taxes on it.

D. Pierce – you'll have to come up, use the microphone and be sworn in.

Mr. Fee was sworn in and stated that they own half way up the roller rink and pay taxes on six and a quarter acres.

M.L. Haring – it's a deeded right of way?

Rebecca Hoff – It's in the deed.

M.L. Haring – It would be the right to use the right of way to access.

Mr. Fee – not both lanes. One lane in and one lane out. The buses take up both lanes.

M.L. Haring – the easement was there for a long time as the Pinkertons owned that property.

Mr. Fee – The Pinkertons owned, sold it to someone else and bought it again. I bought it from someone else, in I believe 1985.

M.L. Haring – did that answer your question a little bit better?

C. McBride – I'm not sure.

M.L. Haring – that was always the access road to that property.

Mr. Fee – they're landlocked so they have to go through his property.

C. McBride – what lot is the roller rink? 12.01 or 12?

M.L. Haring – 12 is the roller rink and 12.01 is the farm that sits to the north of the roller rink.

C. McBride – this map shows two Lot 12s and they both say 42 acres.

M.L. Haring – Lot 12 is the farm.

C. McBride – there's a conflict on the blueprint and that's what causing me problems.

M.L. Haring – Ms. Goff you're 14.01?

Rebecca Goff – yes.

T. Decker – the Board is referring to the key map on the first page of the submitted plans, and there is an error. It shows two Lot 12s both on 42.724 acres. The larger lot in the middle is the actual Lot 12 where it says Block 14 next to it. When these plans are drafted you copy the text and place it someplace else with the intent of changing it. If you look it has the same acreage. It should be Lot 20 and the one in the lower right hand corner should be Lot 20, and that he believes has about 90 acres.

C. McBride – the lot above there is also marked as Lot 12, so that has to be changed. (in the upper right hand corner)

T. Decker – that would be Lot 21.03

C. McBride – is there any way that we can get a copy of the variance for the roller rink and the easement?

Rebecca Goff – I have a copy of the variance.

D. Pierce – me, too but not the easements. You would need to ask Mr. Fee and Ms Goff to provide copies of the easements.

C. McBride – for the record we're asking for a copy of the easements for the next meeting.

M.L. Haring – any other questions?

Mike Pisauro – Before the DRT was operating, the roller rink was operating. Is the traffic from the roller rink less than or greater than what's currently occurring since DRT?

Rebecca Goff – way less. It was very quiet. Vehicles would drive by but nothing like what they have to live with with the tubing business.

M.L. Haring – Ms Goff, do you have anything else?

Rebecca Goff – no.

M.L. Haring – any more questions? Anyone else in the audience that would like to testify?

Carl Brown was sworn in and informed the Board that Greg and him started the DRT together in 2003 and in 2003 the homeowner who just testified didn't have any building there whatsoever. It was a lot. The tubing business was there before they started to build. There's been testimony referencing the original variance for the roller rink. He went on to say that both him and Greg went to the municipal office and spoke to the clerk who directed them to the solicitor. They described what they were doing and bottom line they were told that it sounds like a similar use, have a nice day.

M.L. Haring – it was someone from the township that said that?

Carl Brown – yes.

D. Pierce – are you currently affiliated with DRT?

Carl Brown – I am not.

Carl Brown informed the Board that he is in transportation logistics for 35 years. He believes the point that everyone is missing is by putting only tubes on a bus and people on another bus so instead of 30 and 30 you're going to get 60 and 60 and that's 120 items that will be moved with two buses as opposed to 60 items with two buses which cuts down the up and down on Route 29.

Mr. Hoffman - you're referring to people as items.

Carl Brown – people and tubes are items, correct. Right now you can only fit 30 people with a tube on a bus no matter how you stack them. With the seats out and putting only tubes in you can get more than 60 tubes on a bus, probably 100. You can fit people with people a lot better than people and tubes. Does anyone have any questions for me?

J. Laudenbach – In 2005, how many buses were in operation?

Carl Brown – six.

L. Frank – when you started the operation, do you recall if that was zoned AR-2 then or was the zoning different then?

Carl Brown – he believes the zoning has never changed since 1976. There was a variance for a skating rink which they described as people renting sports equipment and using it, so we said we're doing the same thing and the solicitor from the township concurred with that assessment.

L. Frank – thank you.

Carl Brown – It's been going on for 10 years and it's not like it just started up.

T. Decker – could you go through the scenarios that you did before with currently the number of tubes and people on a bus and then what's proposed and the number of buses.

Carl Brown – he hasn't read the proposal at all. He's going by testimony that he's heard this evening. He remembers when he was driving the buses with 30 people holding their tubes on the bus with no room for anything else, so 60 items on a bus, people and tubes. So it's 60 people on one bus and 60 tubes on another bus – that's 120.

Mr. Hoffman – assume that you remove the seats- can you fit more than 60 tubes on a bus?

Carl Brown – yes.

Mr. Hoffman – how many more?

Carl Brown – at least 100.

Mr. Hardcastle – when you started the operation, where did you drop people off?

Carl Brown –the boat ramp, the Harthshorne property (HIG) and a place they called the 3 hour spot

which is across from the beaches sign.

Mr. Hardcastle – so from 2003 when you started the operation, you were dropping people off at this location and did. Did having access to that location allow for a more efficient operation? Is that why you chose to use that location?

Carl Brown – yeah. The idea was to keep the boat ramp from jamming up. Private people doing their own thing, enjoying the state parks. They go and park there and would just completely overflow it, so it took some of the pressure off that.

Mr. Hardcastle – when you dropped people off at the subject parcel it didn't have the benefit of the improvements that they're proposing, correct?

Carl Brown – certainly not.

Mr. Hardcastle – so the efficiencies you realized when the operation began and you chose to use that spot, they would be compounded by the improvements proposed?

Carl Brown – yes.

M.L. Haring – Board questions for Mr. Brown? Anyone in the audience?

Gilbert Dick – If buses were being used or unload on the property that's now the subject of the variance, wasn't that an out of compliance use?

Carl Brown – I wouldn't know- we were walking across the abandoned property to get to the river.

Gilbert Dick – can I direct the question to one of the representatives of the applicant?

Mr. Hoffman asked Gilbert Dick to repeat the question.

Mr. Hardcastle – Mr. Crance will clarify the use.

Mr. Crance – just to clarify the statement Carl made- was a misstatement. They were dropping people off on the side of the road on the shoulder and they would walk across that property. Nothing was done on that property. They were just pulling over, do a U-turn, stop across from Diana's house on the side of the road and they would get out and walk straight down. They were also using the trail across the bike path and going straight to the river.

Carl Brown – I apologize for not making that clear.

Gilbert Dick – sounds like a pretty presumptuous use of the property and unloading of vehicles on Route 29.

Mr. Hoffman – we're not proposing to use the shoulder of Route 29 to unload patrons.

Mike Pisauro – Mr. Brown, you had not looked at the applicants proposal or submission, correct?

Carl Brown – the first I saw any of this was when it was on the Board tonight.

Mike PISAURO – so whatever you saw tonight is what you know.

Carl Brown – correct.

Mike PISAURO – have you ever removed the seats from a bus to load with tubes?

Carl Brown – absolutely.

Mike PISAURO – the same bus that he's currently using?

Carl Brown – the same style of buses, and some of the buses that they first bought are still in service.

Mike PISAURO – so you've removed the seats in a bus for tubes?

Carl Brown – correct. Not all but some. They never completely gutted a bus to just have tubes in.

Randy Lerch – In 2003 when you started the business- how many customers did you get a summer on average?

Carl Brown – our busiest day was 672 people.

Randy Lerch – In 2005 when you left?

Carl Brown – 672 people.

Randy Lerch – so in 2003 would it be more or less than that?

Carl Brown – it was less.

Randy Lerch – so based on what you just said, in 2005 I would have expected to see about 670 people drive up the side of my yard in one day?

Carl Brown – 670 people in buses, cars, whatever. He wouldn't say 670 vehicles that's not fair.

Randy Lerch – I didn't say vehicles. I said people.

Carl Brown – yeah, we did them all in one day. You would've been looking out your window.

Randy Lerch – or sitting on my deck. You're saying a bus with no seats can carry 100 tubes?

Carl Brown – yes.

Randy Lerch – how many seats are required to carry 60 people?

Carl Brown – 30 seats – two per seat.

Randy Lerch - is that based on your standard school bus?

Carl Brown – yeah.

Randy Lerch – a bus that carries 30 people and 30 tubes, what's the configuration of that bus?

Carl Brown – you can do it either way. Most times we turn the seats sideways so you're facing each other and in some cases we take the seats out of the back and throw the tubes in the back and the people have to sit two to a seat.

Randy Lerch - so based on your logistics Mr. Crance is going to be required to have three bus configurations, one with no seats to accommodate 100 tubes, another configure that has 60 seats to bring up people from the area below and buses configured with 30 people with seats along the side to handle tubers and their tubes going to the various drop off points.

Carl Brown – I don't know because I haven't been privy to this.

Randy Lerch – based on what you've heard tonight and your logistics background – you would have to coordinate those three different bus configurations between picking up people down here, dropping them off here, picking up over here. That's a lot of communication in your logistics experience, correct? It takes a lot of communications to coordinate all those different styles of buses going to different places.

Carl Brown – yes and no. With planning and a two way radio it's relatively simple. A 50 foot trailer can hold way more than 100 tubes.

Randy Lerch – trailers are not allowed on Route 29.

Mr Hoffman – we're not proposing to use a tractor trailer.

M.L.Haring – does anyone else have questions for Mr. Brown? OK-Thank you.

Michele Bernhard, sworn in, stated that she's been a resident of Kingwood for 14 years. Her and her husband and children are very active users of Route 29, walking and bicycling on the path and also tubing on their own. Over the past couple of years there has been an increase in the amount of people tubing down the river due to Mr. Crance's business. Up until this year it really hasn't been much of an issue. With Mr. Crance's lot and the idea that people will be walking from his lot down the pathway to the boat ramp will be a huge disturbance to that trail. She can't even imagine dealing with people coming the other way with canoes, kayaks and tubes and that's not even looking at the busing that will change the nature of the trail and that area of the Delaware River, the park and even the roads.

Kathy Kolvites, sworn in, stated that she doesn't live along the river but has been walking for over 20 years on the river path, several times a week year round. She's opposed to a variance for a commercial business in an AR-2 area. She feels that the river is a unique, scenic and beautiful part of Kingwood and putting tubers, porta potties, kayaks, buses and a fence along the river will negatively affect the beauty of this area. The boat ramp and river path are for hikers, bikers, fisherman and boaters. A business that expects hundreds of tubers and kayaks entering the boat ramp brings up important questions. Will DRT provide a traffic controller to stop tubers and kayakers at the boat ramp to allow a boat to enter and leave the river? Will there be tubing employees present to instruct tubers and kayakers to walk single file so that people who are out enjoying walking, running and biking have room to pass? How will DRT stop tubers from using the one or two porta potties supplied by the state at the boat ramp? They overused already. The trash, will the DRT provide and maintain containers for their customers at the boat ramp and wherever boaters are going to exit the river? She's opposed to a variance being granted but hopes that the tubing company plans to provide and require life jackets to be worn by all tubers. She also hopes that the DRT would commit to a yearly donation to the local rescue squad. She also hopes that the buses will be

required to shut off their engines whenever they are loading and unloading because of pollution.

M.L. Haring - anyone else from the audience?

Gilbert Dick, resident of Kingwood Township, informed the Board that he doesn't live near the site but is concerned. He hopes the Board keeps an open mind throughout the process. He would think that state approvals procured for this site wouldn't have much of an impact and wouldn't be surprised if they couldn't locate Kingwood on the map. There has been some comments that the operation of this business hasn't been in compliance and he feels that it's hardly operating in what he would call "good faith". The applicant's planner made several comments which sounded like wishful thinking when he spoke about this being a low impact use. He would like the Board to visualize this operation in their minds and whether they would consider this a low impact use. Other references made were of harmonious use of land and the request and use being as benign a use as any. He feels there are other uses that would be more benign. Some comments made were that this property is surrounded by public land but there are neighbors adjacent to it. This application is based on the good for Mr. Crance's business and not the good for Kingwood. The planner that spoke this evening addressed those issues very specifically. The applicant's planner spoke about a low impact use and seasonal. From May to September it's used quite extensively.

The fact is that from May to September people like to sit outside, work in their gardens, read outside and hear the country sounds. The weekends are worse when people have off from work and want to enjoy the outside of their property and not the disruptive noises and fumes from idling buses. He feels there will be many more buses whether this property is granted a variance or not. He would ask the Board to consider the public impact as though they were near this activity and consider the precedent that will be set for such applications on residential properties. There's an existing profitable business that's disruptive enough so why grant a variance that would increase that disruption and don't do anything for Kingwood Township.

M.L. Haring – at this point is 10:30 and the proceedings are closed.

C. McBride – can I make a request? The applicant has stated that this is a low intensity operation, so can we get some statistics on what the volume has been on an hour by hour basis over the weekend for the past couple of years?

Mr. Hoffman – the traffic or patronage?

C. McBride – the patronage.

Mr. Hardcastle – we can't do hour by hour because we don't have the statistics. We can do year over year monthly use, hour by hour isn't something that they track.

C. McBride – I would request all bus departures and returns also to give us an idea.

Mr. Hoffman – when we return in November are we going to move to his rebuttal or entertain more questions and testimony from the public?

M.L. Haring – I don't see that we finished up completely tonight. If there's anyone else in the audience at the next meeting, they'll go first and then we can get back to you.

Mr. Hoffman – OK. We don't want to go past the November meeting, so we like our time to rebut

anything more from the objectors, then close and look for the Board to vote.

D. Pierce – would you put on record your consent for an extension of time for the Board to act on this application through the next meeting.

Mr. Hoffman – so consented. He asked for a couple of minutes after they close to speak with Mr. Pierce.

M.L. Haring – this meeting is adjourned. No notice is required for the next meeting, which will be November 13, 2013, at 7:30 pm

**OPEN TO THE PUBLIC:**

Nothing.

**COMMUNICATIONS/REPORTS:**

Nothing.

**ADJOURNMENT:**

C. McBride made a motion to adjourn, seconded by J. Laudenbach. All in favor. Meeting adjourned at 10:33 pm.

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

