

**KINGWOOD TOWNSHIP
BOARD OF ADJUSTMENT**

**November 13, 2013
MINUTES
7:30 PM**

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

PRESENT:

L.. Frank	B. Wilson, Sec
C. McBride	D. Pierce, Attorney
J. Laudenschach	A. Planer, Alt
D. Hewitt	M. L. Haring
P. Stepanovsky	T. Decker, Engineer
T. Ciacciarelli	C. McGroarty, Planner

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:

J. Laudenschach made a motion to approve the September 11, 2013 minutes, seconded by C. McBride. On roll call to vote.

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

Abstain: D. Hewitt

Absent: None

J. Laudenschach made a motion to approve the October 9, 2013 minutes, seconded by P. Stepanovsky. On roll call to vote.

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

Abstain: D. Hewitt

Absent: None

RESOLUTION:

None

NEW BUSINESS:

Hearing: Continuation – Delaware River Tubing, Inc. BL 50, L 9

M.L. Haring announced that it's imperative to use the microphone. She also noted that last month they left off with if there's anyone else from the audience – they would be going first. Is there anyone new this evening that has testimony?

David Pierce informed M.L. Haring that he spoke with the applicants' attorney earlier this evening and believes that he would like to proceed and finish this evening, and if any objectors have not testified or provided their viewpoints or additional questions they could proceed if that's okay.

David Pierce announced, for the record, that Mr. Hewitt who was not present at the October meeting has signed a Certification indicating that he has read the transcript or listened to the recording and is eligible to participate and vote on this matter this evening.

Mr. Hoffman, applicants attorney, stated that the continuing with the case in response to the objector's professional testimony was that they would be done and the Board would hear from other objectors, grant the variance and conclude the hearing. He stated that he has a video of a bus being loaded that Mr. Crance will testify to and he also has brought back the traffic engineer, Mr. Troutman, to address testimony of the objector. He also has data that Board members wanted regarding the number of customers that will be presented through Mr. Crance. He stated that he expects this to take anywhere from a half hour to 45 minutes to accomplish.

M.L. Haring – Okay.

Mr. Hoffman verified that Mr. Troutman was previously sworn in and asked him if he had the opportunity to review the transcript of the objector's traffic professional from the last hearing.

Mr. Troutman – Yes.

Mr. Hoffman was asked to put Mr. Troutman's Exhibits up on the screen.

Mr. Troutman identified- **EXHIBIT A-26 - “NJ 29 South to North Miles Posts 32 & 34.71”** This is a diagram that's put out by the State in a publication that's called “Straight Line Diagrams,” and what they do is diagram every highway and milepost in the state. It's a linear depiction of Route 29 that happened to be the section where the applicants property is located. Looking at the diagram you can see Route 29 is a straight line running across the page and all intersecting streams, municipal boundaries and roadways in from the top or the bottom. He boxed a particular driveway “Private Drive” which is the driveway to 5 single family homes located across from the subject property. Above that it's blank and there are no roads or anything between Route 29 and the river (at the top). At the bottom he has circled a number referring to the location of a count station that the NJDOT has its traffic database which is located near Copper Creek and close to the applicants property and shows that the state does include data from this route in their pattern factors in their database.

Mr. Hoffman – the counter used to create the DOT data is pretty much right on stop to where we're discussing this application.

Mr Troutman identified – **EXHIBIT A-27 - “APRIL 20, 2013 TRAFFIC DATA”** This is the raw traffic count data that was manually collected on Saturday, April 20, 2013, in good weather conditions. He reviewed the photos and stated that it was a day that people could be using the trails along the river. The roller rink was also generating traffic for a birthday party being held there in the afternoon. He boxed the peak summary of those raw numbers on the top and those counts were for every 15 minutes for the 3 hours counted. At the

bottom is the intersection peak within the 3 hours that began at 12:30, and then the total hourly volume for movement at the intersection of Route 29 – roller rink and D& R park access. The count was set up as a 4 way count at this location. The bottom summarizes the numbers they found that day to predict the April volume traffic that passes the site and the private drive. Going north they show a total of 129 vehicles and south a total of 142. The grand total is 271. To factor that to an average month they increased it by 7.3 %. (times 1.073) which brought it up to 291, so an average month on Route 29 would be 300 cars in both directions. To bring it up to a peak month in July they divided it by 0.747 which brought it up to 389, almost 400 cars. That's an increase of 120 cars an hour over what they actually counted that day, which could happen in the summer. If that was tubers, 4 per car it would be approximately 480 tubers an hour, which is more than what they have but it shows the difference between the actual counted and the peak month is in the ballpark of what to expect in July. Using historical data and factoring in data at a later point is an accepted methodology.

Mr. Troutman stated that the projected reduction in the number of buses that the applicant hopes to achieve is a major factor in this application. By having the equipment down by the river instead of having to bus the equipment from the roller rink will cut trips out by removing the transport trips that currently exist. On the return trips, when the tubers exit the river, you will still need to get tubers and equipment back to the roller rink. This can be done more efficiently if this application was approved because of the separate trips of tubers and equipment which would reduce the number of bus trips along Route 29.

Mr Troutman - **EXHIBIT A-3 (a), Sheet 2 – Proposed Improvements, Rev 1-** a review was done of the **NJ DOT Access Code** and the revised plan complies with the code in terms of the 50' curb line opening requirement. They are also proposing a bifurcated driveway system which is: 2 - one way driveways instead of a 1 – two way driveway. Each lot on a state highway is eligible for a 1 – two way driveway and you can substitute 2 – one ways for that (2 one ways = 1 – two ways). They are compliant with that.

Mr. Troutman – The Exhibit depicting 3 buses navigating within the half moon driveway can accommodate the circulating of a bus (templates published by AASHTO). Overhang as mentioned concerning a side mirror but that would occur in areas where there are no people standing so there is no issue of pedestrian safety here.

Mr. Troutman observed the private drive across from the site and his traffic observation indicated that traffic was so low that it was not really considered. He noted two movements in and out of the private drive during a three hour period on Saturday. There is no issues with the handling of turning movements or driveways being blocked with this property or the private drive.

Mr. Troutman stated that the use of the DesignPlan property, which occurs a couple times a year, is not a significant volume of traffic that does that run and isn't going to change with this application, it would still be needed for an overflow situation and would continue as it does now. The bus traffic from the DesignPlan parcel is captured in the data shown on **EXHIBIT A-26**.

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

C. McBride – You said traffic from DesignPlan is included in this? (EXHIBIT A-26)

Mr. Troutman – Yes, that would be what occurs in July and would be something that occurs in the summer which is what they factored up to.

C. McBride – That's not the question I asked. You said the data for DesignPlan would be included in this.

Mr. Troutman – Yes, the 400 cars projected in the summer - the shuttle trips can be in that number.

C. McBride – That's not what you said. You said it was included in this state document.

Mr. Troutman – Yes, that document dictates the factoring that would be for July.

C. McBride – This traffic would never come into this document because it wouldn't make it down to Copper Creek, so it would never be included.

Mr. Troutman – It would be reflected in whatever location might be north of here.

C. McBride - You're speculating that there's something north of here and there's nothing that shows there is, and the property is to the right of the township line, which he assumes is the dotted line.

Mr. Troutman – A shuttle use that generates a handful of trips when you're factoring hundreds of trips can be assumed to be in there and it's not significant if it doesn't pass through the one location to the south because it's not a significant difference in the magnitude calculated.

C. McBride – You're making a jump to a conclusion because this is an extraordinary event when they have to put people there. It's when there's an extraordinary number of cars over there, correct?

Mr. Troutman – Correct.

C. McBride – That traffic between DesignPlan and the roller rink, the roller rink and drop off point aren't in the scope of going across the permanent counter, so it would never have been counted.

Mr. Troutman - Traffic coming from the south and going to the DesignPlan parking lot would have passed through that location. The bus that puts all the people on the bus, generates one count going down, would be assumed in the factor.

C. McBride – It would never cross the count.

Mr Troutman – If it came from the south it would cross that point.

C. McBride - That could possibly be 50%.

Mr. Troutman - It's not significant in the projection he did into a maximum month.

C. McBride – If they are going to be using DesignPlan as an overflow it's going to be because they filled up and now a mass amount of traffic is going there in one short burst, so it is significant.

Mr. Troutman – That's not how it works. He wouldn't characterize it as a mass amount of traffic going there not accounted for. It's on Route 29.

C. McBride – We saw a picture with at least 20, 30 cars there.

Mr Troutman – I'll try to explain it in a different way. The recreational factor he used is an extreme increase factor that includes the people that use Route 72 to go to LBI. That's a recreational route that goes into the July factor. Route 29 is not an extreme beach corridor like Route 72, but I'm using a factor like that giving it a very conservative calculation for Route 29.

C. McBride – No further questions.

M. L. Haring - How often during a regular month, when the weather is good, is the Design Plan parking lot needed? Is it an every weekend thing that there are so many cars?

Mr. Troutman – Testimony at the last hearing indicated approximately three times during the past season.

M.L. Haring – We'll open it backup to anyone else in the audience who has questions, and I would like to go with the people who haven't spoken yet.

D. Pierce, Board attorney, reminded everyone that this is just questions for Mr. Troutman.

M.L. Haring – We'll now do questions for the traffic expert, Mr. Troutman.

Mr. Torkelson, Stockton Planning Board, asked about the recreational factors that Mr. Troutman mentioned and that he's relying on data from other roads in the state.

Mr. Troutman – They are in a group of roads known as recreational roads and in that group is Route 72 on the way to LBI.

Mr. Torkelson – Are these roads scenic byways?

Mr. Troutman – Route 29 is, but he doesn't have an exhaustive list.

Mr. Torkelson – What are the other roads you refer to in your recreational factor?

Mr. Troutman – I don't know, but Route 29 is in a scenic byway.

Mr. Torkelson - Are any of those other roads inside a designated segment of the wild and scenic river corridors?

Mr. Troutman – Route 29.

Mr. Torkelson – That's the only one. We have a unique situation here and it's not equivalent to driving to the beach or any other roads mentioned.

Mr. Troutman – The beach is the more severe peaking, so applying that here makes this more conservative.

Mr. Hoffman, attorney for the applicant, stated that more conservative means the numbers he's projecting are based on higher intensive used roads like the one going to LBI. His numbers here are on the high side.

Mr. Torkelson – Those roads are not scenic byways or within a wild and scenic corridor.

Mr. Hoffman – Route 29 is in there.

Mr. Torkelson – Thank you.

M.L. Haring – Mr. Lerch?

Mr. Lerch asked Mr. Troutman to explain how there will be more efficiency of the buses returning from the pick up point.

Mr. Troutman – Using a hypothetical maximum load situation of six (6) buses an hour each with sixty (60) people on them. Lets say we are able to put 360 customers on the river an hour and at the end of the trip there is an hour at the discharge where those 360 people would come off. Now, you would need 12 buses to get those people and their tubes back up because you can only get 30 people per bus with their tubes. This proposal would have 6 buses to get people up and depending on how many tubes you could get on a bus. He

thinks we're going to hear evidence about that later tonight, with the seats out of the bus, 150 tubes per bus you would only need 2 or 3 buses to bring the tubes. That's 8 or 9 buses where you have 12 today.

Mr. Lerch – Why can't you do that today?

Mr. Troutman – I don't know.

Mr. Lerch – Why can't they put buses down there today or the last 10 years with no seats in a bus to bring up tubes and only tubes? This property is not going to give them an advantage to do that. Having this property is not going to add anything.

Mr. Troutman – Having this property does add something by having the equipment down at the river.

Mr. Lerch – He's not questioning that. He's questioning the returning of tubes being more efficient now. His point is that this property doesn't increase the efficiency of what they do now.

Mr. Troutman – On the return?

Mr. Lerch – Correct.

Mr. Troutman – I don't know the answer to that, but he does know that they don't have buses without the seats out of them now.

Mr. Lerch – You testified to the number of times that the DesignPlan parking lot is used. Have you seen or counted the number of times it's used?

Mr. Troutman – No.

Mr. Lerch – What is your basis for your testimony?

Mr. Troutman – Testimony on record from the last hearing.

Mr. Lerch – Which was?

Mr. Troutman – Approximately 3 times last year.

Mr. Lerch – The testimony was given by?

Mr. Troutman – Mr. Crance.

Mr. Lerch – Thank you.

M.L. Haring – Anyone else?

Mr. Pisauero, attorney for Diana Evans, asked Mr. Troutman to clarify a couple of things. Is it his (Mr. Troutman) testimony that in 2012 and 2013, Route 29 operated at a level of service A or B? Would that be accurate?

Mr. Troutman stated that they did a capacity analysis at the site entrance and exit. The left turn in, summer of 2013 was a level of service A, and exiting movements were a B.

Mr. Pisauro – If this variance was granted would the levels of service still be an A or B?

Mr. Troutman – No, that's if the variance is granted, a future condition.

Mr. Pisauro – Do you know what the level of service is on Route 29 in the summer months currently?

Mr. Troutman – Where?

Mr. Pisauro – In the vicinity of this property.

Mr. Troutman – At an intersection?

Mr. Pisauro – At this property, the driveway. Is the level of service still A or B?

Mr. Troutman stated that he didn't do an analysis at that driveway, but based on two movements in and out every 3 hours he would say the delays are low and are probably in the A to B range.

Mr. Pisauro – With the variance the levels of service are A or B, and without it the levels of service would be A or B, correct?

Mr. Troutman – With the variance we bring in the driveway which is what he was focused on to make sure that that works at an adequate level of service, so – yes, it's an A or B. It's a future projection, not a comparative.

Mr. Pisauro – Thank you.

Ms. Nuckols- 2752 Daniel Bray Hwy had a question. With the comparison of Route 29 and 72 which she realizes are both recreational but are totally apples and oranges. Route 72 has mass volumes going onto the island, large police presence and traffic control. There's none on Route 29 and no police department, crosswalks and no stop signs.

Mr. Troutman – He wasn't comparing it in any of those ways.

Ms. Nuckols – You used the same data.

Mr. Troutman – He needs to finish his question.

Ms. Nuckols – Okay.

Mr. Troutman – He wasn't comparing it in any of those ways she listed. He was citing that on a monthly basis Route 72 will fluctuate in volume like a recreational route. Example: The traffic on Route 72 would be a lot higher in July than it would be in April. That was his only point of bringing Route 72 into it. He needs a similar recreational route to take it from April to July. Route 29 and Route 72 are in there in with so many others.

Ms. Cuckolds – There's nothing similar about Route 72 and Route 29, nothing.

Mr. Trout man – He didn't say there was.

Ms. Cuckolds – Yes, you did.

Mr. Trout man – I didn't.

Ms. Cuckolds – You did. With Design Plan the factoring of those cars was based on this past summer and was used 3 times. This past summer was not a good representation of the volume of traffic on Route 29 or at Design Plan. No one used the river and she believes it should go back to 2012, 2011 when it was used every weekend.

Mr. Troutman – That's where the factors come from. There was no 2013 factors in his volumes.

Ms. Nuckols – The 3 times this past year were based on 2013.

Mr. Troutman – You're saying it was used more in other years?

Ms. Nuckols – It was.

Ms. Nuckols – Thank you.

Ms. Goff – When cars back up when they are going to park at the roller rink- the buses use the left lane, the wrong lane, and what they did this summer is they had the State Police with walkie talkies directing the buses using it as a one lane road. Are you saying by having this new property that this traffic situation will be relieved?

Mr. Troutman – He didn't study or testify on the roller rink drive operation except to say that they're removing buses from that because the buses have to get those tubes back up there. They won't have to go in there and the buses that need to get out are going to be fewer because they won't have tubes in them. The roller rink influence will decrease, in terms of buses, with this application because the equipment will be down by the river, so there should be relief in terms of bus traffic in the roller rink drive.

Mr. Hoffman, attorney for the applicant, stated that decreasing the number of buses that have to go from the roller rink to the parcel will allow them to put passengers on the buses, not passengers and tubes. This will create less buses to move the same amount of people and that can only improve the condition of the private road by using this parcel as a staging area.

Ms. Goff – Did you say there would be 8 buses per hour as opposed to 12?

Mr. Troutman – He said to put people into the river you would need 6 instead of 12 and to get people out of the river you would need 8 instead of 12.

Ms. Goff – Did you take into account that they have large city buses besides the school buses?

Mr. Troutman – His observations showed school buses but he understands that other outside buses could come from outside locations using their own buses. Is that what your referring to?

Ms. Goff – All she knows is they (she/we) own the property that abuts the roller rink and there are larger city buses there, larger than school buses.

Mr. Troutman – Bringing groups to the site?

Ms. Gioff – She doesn't know what they're doing. They are parked up there, idling and keeping the ac on.

M.L. Haring - You mean charter buses?

Ms. Goff – Some kind larger than a school bus.

M.L. Haring – Are they for the roller rink?

Ms. Goff – No, tubing.

Mr. Troutman – He didn't see that on any of his observations.

Ms. Goff – Has no further questions.

C. McBride – One last question. You said about 360 users per hour and the number of buses being reduced, that's if they are packed at maximum efficiency, correct?

Mr. Troutman – Yes, it was just a hypothetical. He was trying to do math illustration of a reduction.

C. McBride – So, that's only the best case, so if one of the buses has 59 on it instead of 60, there's another bus running. You lose 33% of your savings.

Mr. Troutman – I don't follow that.

C. McBride – If you pack a bus with 59 people on it, the next 2 people or a family of 3 or 4 aren't going to get on because they don't want to be split up, so they are going to send a bus out with 59 on it, that means you're not going to send 6 buses down. You're going to send at least 7, so the efficiency of 2 or 3 bus runs now goes down to 2, you've lost 33%.

Mr. Troutman – He doesn't think that's correct. That would be an hour where you didn't make your 360 because you put 59 on one.

C. McBride – No. You put 59 on because of the number of people sitting there. How many one-sis do you really have going on the tube rides? You have families, so if there's one seat left nobody is going to take it, they'll wait for the next bus. Your scenario is only with 60 people on it.

Mr. Troutman – Then you're not putting 360 people in the river per hour, so these people are spilling into the next hour.

C. McBride – No, You would still have to send them down and you might have the same 360 but you'll need 7 buses.

Mr. Troutman – He doesn't follow the logic at all.

C. McBride – Have you ever been to Six Flags and there's 1 seat left on a roller coaster because there's parties of 2 or 3 together that don't want to be split up? There's always the chance that 1 seat will be empty on one of those buses.

Mr. Troutman – He understands that part but that just means that you get 59 out instead of 60.

C. McBride – Are you a traffic expert or a mathematics expert? One of the seats on one of those buses is empty for some reason. Somebody has an extra cooler that they want to put on or doesn't want to move over. There's no way that you're going to get exactly 360 in an hour on exactly 6 buses. It just won't work.

Mr. Troutman – It's a theoretical number.

C. McBride – No, you said that if we have 360, we have this many buses. You didn't say in theory. You said that, that theory doesn't work.

Mr. Troutman – He didn't say in theory.

C. McBride – Theory doesn't work.

D. Pierce – He has a couple of questions for Mr. Troutman. He wants to make sure he understands his testimony and analysis. His (Mr. Troutmans) testimony is that with the adjusted numbers the peak hour traffic volume is 389 cars in the summer?

Mr. Troutman – Yes.

D. Pierce – 389 vehicles during the peak hour, correct?

Mr. Troutman – Yes.

D. Pierce - You also testified that you didn't examine the level of service at the intersection of the roller rink drive and Route 29?

Mr. Troutman – Correct.

D. Pierce – Did you examine the level of service at the intersection of the driveway to the state park and Route 29?

Mr. Troutman - No.

D. Pierce - Your testimony is that granting this application would result in a reduction of 6 vehicle trips per hour?

Mr. Troutman - Yes.

D. Pierce – With a peak hour vehicle load of 389 vehicles, that's approximately 64 vehicles every 10 minutes, correct?

Mr. Troutman - You're breaking the volume down into 10 minute increments?

D. Pierce - Yes, that's been some of the testimony as well, you would have 1 bus every 10 minutes, 6 buses per hour.

Mr. Troutman - So the existing volume every 10 minutes is – I can do a quick calculation.

D. Pierce - 389 divided by 6 comes out to between 64 and 65, rounded down to 64.

Mr. Troutman - Yes.

D. Pierce - If you take the same average on the bus reductions you'll have 1 bus reduction and 1 less trip every 10 minutes, so you're reducing the number of vehicle trips on the road by 1 every 10 minutes in the peak hour.

Mr. Troutman - Yes.

D. Pierce - Thank you.

M.L. Haring - Any other questions for Mr. Troutman?

Mr. Hoffman, attorney for the applicant, asked Mr. Troutman if the Board grants the variance requested and the site plan is put into place on the subject parcel, will the present traffic conditions be aggravated?

Mr. Troutman - No.

Mr. Hoffman – Nothing further.

M.L. Haring – Is there anything more you want to present?

Mr. Hoffman - Yes, but nothing further for Mr. Troutman.

Mr. Hoffman mentioned a problem with the Boards computer that doesn't seem to support the MP4 that they brought in with a video.

M.L. Haring - We'll take a 10 minute break now so we can see what we can do about it.

M.L. Haring - The meeting will come to order.

Mr. Hoffman stated that Mr. Crance was previously sworn in.

Mr. Crance stated that he was involved in the production of the video marked **EXHIBIT A-29 – Tube Loading**. This video was taken a week ago Sunday and shows an average style bus being loaded up with blown up tubes with the seats on the bus. With the seats being in you can't get as many tubes in and with them out you probably can get 20 more on. This video shows 132 being loaded and without the seats approximately 150 tubes could be loaded. This video shows the tube count and time which is 132 or 133 in 5 minutes- 3 seconds, with 3 people doing it. There could be 4 or 5 down at the spot and this could be much faster.

C. McBride – Did you say this was on YouTube?

Mr. Hoffman – He believes that one of these gentleman has a YouTube account.

C. McBride – You made it available to the public before you made it available to us?

Mr. Hoffman – I don't know.

Mr. Crnce – It's under a private account.

Mr. Hoffman – You have to have an e-mail link to see it. It's a kid thing.

C. McBride – I'm asking because someone could have looked at it and made an opinion out of context of the testimony.

Mr. Hoffman – Understood.

Mr. Crance – The elapsed time is 1 minute – 38 seconds.

Mr. Crance stated he has another exhibit to show the Board, **EXHIBIT 28**, which is the sales sheet generated off of a high end POS (Point of Sale) system that's linked to their security video which records every transaction and total amounts of customers for the year 2013. The first sheet depicts June by the day of the week (1,077), second sheet July (13,276), third sheet August (13,762) and fourth sheet September (1,348) customers. The bottom of the sheet shows the grand total for the month.

Mr. Crance stated that this year (2013) they experienced a lot of rain and compared to their peak year (2012) to be just above half. He also stated that they used DesignPlan 3 times this season and 6 times the year before. The maximum amount of cars at DesignPlan is 38 to 40 cars and it was used approximately 1 hour, so 3 times would be 3 hours and last year 6 hours.- 6 times.

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

C. McBride – I do, please.

C. McBride – Could you go back to July, on the 18th which was a Thursday, your peak year would have been over 2,000 customers on that day ?

Mr. Crance – No, because he said about half, but some weekdays the volume from groups were not affected by the weather. He has 2012 and can look it up, but he thinks it's one of the best weekdays they've ever had.

C. McBride – Saturday, July 27th, 1,034, that's not groups. That's mostly car traffic, correct?

Mr. Crance – Weekends are mostly general admission, but we do have some groups, but without looking it up he can't say whether it was mostly groups or general admission.

C. McBride – What hour do you open?

Mr. Crance – Weekends at 9 am, close at 4 pm. Weekdays from 10 am to 3 pm.

C. McBride – Lets say you did a peak day in 2012 of 2,000 people. Would that be a reasonable account of your best day in 2012?

Mr. Crance – That could be very close. It might be 1,860 or 2,100.

C. McBride – Let's say 1,860 over a 6 hour period of time, that's about 300 people-100 cars.

Mr. Crance – It would be 7 hours, 9 to 4.

C. McBride – I was using 6 because it's a round number, so that's 300 people per hour.

Mr. Crance – Correct.

C. McBride – 100 cars per hour, if it were flat.

Mr. Crance – If it was, but his recollection is that the most cars ever, was 455, so it's close to 450 people, but it varies.

C. McBride – And your business opens at 9 am?

Mr Crance – On the weekends – Saturday and Sunday.

C. McBride – Is it permitted to have your business opening at 9 am where the traffic is originating?

Mr. Crance – 10 years ago they went to the township, just like they did 20 years ago for the Hot Dog Man and the township attorney told him to go ahead and apply, that he didn't need anything except a Board of Health permit for the Hot Dog Man, so for 16 years he has a permit for that. For the tubing business he and his partner spoke with Bob Novak who told them to go ahead.

C. McBride – He asked Mr. Pierce if the variance for Block 14, Lot 12 can be introduced. He believes there are two variances, one for the construction of the roller rink which was very specific about the hours of operation, which says, ***“The applicant testified that his proposed operation of the roller rink business shall be afternoons and every night between the hours of 7:30 and 10:30 pm with no activity later than 10:30pm”***

C. McBride – Mr. Crance, are you aware of that?

Mr. Crance – No, I'm not. This is the first time that I've heard any of this.

Mr. Hoffman stated that he was just putting Mr. Crance on to get this document in his case. He's done with his proofs.

M.L. Haring – Any more questions for Mr. Crance?

T. Decker, Board engineer, has one quick question. It's just a clarification on the elapsed time. The video was sped up and the timer up there for the minute and half was the time they actually watched, and you testified that it happened over the course of 5 minutes.

Mr. Crance – 5 minutes-38 seconds.

T. Decker – Okay-the other question is when you're at the new site and the tubes are coming off the bus, where do they go? The video showed them being off loaded and thrown at the end of the bus, will they be off loaded the same way?

Mr. Crance – They'll be thrown to the side towards the tube pile.

M.L. Haring – Into the storage area?

Mr. Crance – Correct.

C. McBride – So it took 5 minutes to do that, and there's going to be 2 people that are going to be at this property if the variance is given, right?

Mr. Crance – I think we said 2 to 4 and a bus driver, and the guy that rides on the bus routinely with the group.

C. McBride – The person on the bus is just driving tubes, not driving groups.

Mr. Crance – Correct.

C. McBride – So he starts throwing the tubes off the back of the bus, 2 helpers come up and start working, and then a bus pulls up with 60 people on it. What happens?

Mr. Crance – They'll have to wait until the tubes are unloaded.

D. Pierce – I'll mark the Resolution **EXHIBIT B-1** for the record which is dated January 20, 1975.

Mr. Hoffman – The 1977 one was the residential apartments. The 1975 would make the most sense. The second Resolution (1977) should be submitted for completeness purposes, even though he doesn't think it's relevant.

C. McBride – The next statement in the same sentence says, ***“ The roller rink operation and activities will be conducted and supervised by members of the applicants' family. There will be no employees other than the***

members of the applicants immediate family.” also in this variance. (EXHIBIT B-1)

M.L. Haring – That's in regards to the roller rink?

C. McBride – It says, “*and activities.*”

D. Pierce – For completeness, he has marked **EXHIBIT B-2 – Resolution**, dated June 20, 1977 with respect to the same property (roller rink).

M.L. Haring – It does read hours of operation of the roller rink, this isn't the roller rink.

C. McBride – If the roller rink owns the property and has leased it out, they have to conduct.....the original variance was to build a roller rink..

Mr. Hoffman – The hours of operation that was mentioned before for the the roller rink isn't clear of the start and he doesn't know what it has to do with this application.

M.L. Haring – Mr. Hoffman, have you concluded?

Mr. Hoffman – Yes.

M.L. Haring – is there anyone else in the audience who hasn't previously testified?

Mr. Soriero stated that he's a member of the Stockton Planning Board and the vice chair. He's testifying along with Mr. Torkelson who is also a member and an appointee to the Lower Delaware Wild and Scenic Management Committee. The Stockton Planning Board passed a Resolution expressing it's position that the Hot Dog Man variance should not be granted. Mr. Torkelson will present the Resolution.

Mr Torkelson read the Stockton Resolution No. 2013-02 which was debated in May and June and passed in July. Included in the document were concerns discussed during their meetings.

Mr. Torkelson - We have two co-chairs of the Wild and Scenic Committee here and they haven't seen that.

Mr. Hoffman – We'll produce that to the Board, as a condition, if the variance is granted.

M.L. Haring – You've received verbal approval so far?

Mr. Hardcastle – They've conducted a review and came up with no concerns. The U.S. Fisheries and the Fish and Wildlife have sent e-mails signing off on the conduct of this operation, which he can forward to the Board.

Mr. Torkelson – Have they reviewed the impact of up to 50,000 people a year in the river, no sanitary facilities, stopping off to eat and then they move on?

Mr. Hoffman – They'll provide all of that documentation to the Board, any other agency at the county, municipal or state level, as a condition of approval.

D. Hewitt – Has the Stockton Borough been in contact with the DEP? Do you realize there was a MUA sent for a concession for tubing, which they have approved?

Mr. Torkelson – I'm not aware of that.

D. Hewitt – The tubing exists as a concession which was approved by the DEP.

Mr. Torkelson – Have you seen the Concession Agreement?

D. Hewitt – I have.

Mr. Torkelson – We'd love to see a copy.

D. Hewitt – I can't get you a copy of it. That's just food for thought.

M.L. Haring – Anyone else in the audience?

Ms. Mallia stated that she loves Hunterdon County and that it's a place that's so unique and beautiful. She is dismayed at what she's hearing here tonight. This gentleman has been in business for a long time, and has brought jobs and tourists into the area. He's given a lot of kids lessons on safety and cleaned up the river. Route 29 is a state highway and if you think traffic is going to slow down you're fooling yourself. She's a realtor and anyone who lives on a highway should start expecting it because it's only going to get worse. This is a recreational area and she would much rather see tubing on the river than boats and jet skis putting pollutants into the water. Businesses like this has brought the real estate values up. His business is 3 months out of the year and is bringing in people who are having fun. She's never met this man in her life. He's proposing safety issues and cares enough to want to put signs or flags up to let people know not to go down the river. This is this mans livelihood and if this project will lesson the traffic, why not? Because some people are upset because they might be too close to their house? If you're on Route 29, you've got the address, and it's not going to change. That's it.

M.L. Haring – Anyone else in the audience?

Ms. McBrien stated that her son worked for the river tubing guy. She's concerned about the river and maintaining the quality of life here. She runs along the river frequently and goes past the new site. She had to pick up her son and drop him off at the roller rink. She's an attorney but doesn't currently practice. It seems to her that we have a local businessman who employs local people seasonally and doesn't take employment away from people who need it the rest of the year. Everybody knows you can go to the Hot Dog Man and find a job, that's valuable. Anytime she's been along the river, she's seen things under control. She doesn't have a relationship with this man and has no interest one way or the other, but can say his business is always well run. They keep the crowd and traffic under control. She thinks it's a big step up from the motorcycle crowd. He brings families in for a limited period during the year. She urges the Board to consider granting him what he's asking for. Thank you.

M.L. Haring – Anything else?

Ms. Goff mentioned that Mr. McBride had a question about the easement for the roller rink. She did some research and the easement runs with the land, it's for ingress and egress for Mr. Pinkerton, his heirs and assigns. If you look at the Resolution granted January 20, 1975, the property is in the AR-2 Zone and for a roller rink. The easement is for Mr. Pinkerton, the farmer and the roller rink. That's all.

M.L. Haring-Thank you. Anyone else? We're not going to be just throwing extra comments in here. If you spoke last month and stated your case, we're looking for the new people who couldn't make it to last months meeting who want to give testimony.

Mr. Boyd stated he's a returning marine and served in Iraq in 2003. He met the Hot Dog Man tubing with a competitor in Pa. Greg actually rescued him and his wife on the cold river. He was going out at his own risk and he went out of his way to help him. They became mutual friends, and he hired him, gave him a chance to work. Mr. Boyd suffers from PTSD (Post Traumatic Stress Disorder), which makes it hard for him to get a job because his mental status isn't great. Every summer he gives him a chance to come back and be a

productive member of society. He finds it hard to believe that anybody wouldn't want this man on the river. He's been dealing with the river for 9 years and people come up and down the river, throw trash, leave things and just don't care, but this man cleans up and treats the river like it's his. He feels bad that some people don't like the idea of his business being there, but this is what our economy is based on, new businesses that create jobs making everything better. He hopes the Board will consider giving him a variance and realize what a great thing he brings to Kingwood and the surrounding communities. Thank you.

Ms. Maurer stated she's lived on the river for 20 years and it's not pleasant having all these people all the time. Moving the parking and changing the situation this year was horrendous with people passing by their house on the river. They've had naked people going by and women doing oral sex in front of their dock. The people are going by to Bull's Island to exit and don't know that they are going through a wing dam.

M. L. Haring – Do you know for sure that these are Mr. Crance's customers?

Ms. Maurer – They're not his customers.

M.L. Haring – Then I don't see how that's relevant.

Ms. Maurer – You've repositioned the parking and they've had some crazy things happen. People don't know the aspects of the river and the dangers. They're helping people all the time on their dock. They put up fencing and they're not happy. The people in their community are not happy with what's going on. That's it.

Ms. Bernhard has been a resident of Kingwood for 14 years and one of the reasons she bought a house in the area was because of the quiet countryside. She enjoys walking or biking and the beautiful scenery and not having to worry about the traffic. She feels that the culture of the town and different sections of the town is created not by the people who we have here but by the decisions of the town officials when it comes to planning and zoning. Kingwood Township is nothing like Seaside Heights, but people live here and visit here because of the culture of the area. She doesn't know any other section of the Delaware that's similar to what we have in Kingwood Township with peaceful stretches of road, wide shoulders on either side that runs along the river that's perfect for biking, walking and riding on and several parking areas. The Kingwood section of Route 29 and pathway is a draw for people looking for a quiet, peaceful and safe area to take walks and ride bicycles. People choose to live and visit here for the recreational opportunities. She's not against Mr. Crance's business and see's a lot of benefits to it, but she is against Mr. Crance changing the culture of this area because of the growing size of his business due to the concession agreement. Route 29 used to be a peaceful road, but the past two summers, due to his business, sections of Route 29 are no longer peaceful. She feels the variance will not change that and even with fewer buses, the car traffic seems to be growing yearly. The boat ramp and parking area is no longer peaceful. This variance is not going to change that either. If given this variance visitors entering Kingwood from Frenchtown will be greeted with signs, publicity and traffic, rather than the natural vista that presently exists. The state park doesn't have the infrastructure to handle his business and the amount of people who come to this part of the Delaware. She feels it was very poor planning for the DEP and the Army Corps of Engineers to give Mr. Crance the concession. Kingwood Board members chose Route 12 for our commercial area and Route 29 residential. Route 29 cannot handle the cars that this business brings in on a nice weekend. Route 12 can. If the business couldn't work from a staging area on Route 12 maybe this community is not the right place for his business. Because Mr. Crance owns property along the Delaware doesn't mean it's the best place for his business to be staged out of. She feels there are too many reasons why it will not work out well there and will be detrimental to the culture of the area and the wild and scenic nature of the area. Thank you.

M.L. Haring – Anyone else?

Mr. Maurer – Mr. Bolan talked about the general welfare, public good and the recreation of the operation.

You shut us down when we talk about other aspects of this operation, but that's what he's going to talk about today. He wants to bring up safety. The tubing was being exited at the Byram Boat Ramp. He contacted the DEP who came out and they discussed the rationale of the concession. There's a lot of boat traffic, boats, jet ski's, water-skiing and the wing dam. The tubes are being exited in front of the wing dam. They (DEP) changed the operation and put it at the washed out bridge. They also put up a cyclone fence and what was the egress point for many years the state stopped and wanted a path built there, changes were made. This change is similar to the behavior at the upper part, the traffic safety, the public safety, the motorcycle accident, so the egress part is now the buses taking over what used to be private parking at the washed out ramp. There are no parking signs up, so there's very little parking at the egress point and the private tubers go to the Byram ramp.

M.L. Haring – When you say the private tubers.....

Mr. Maurer – People coming out and using a regular tube versus the commercial operation pushing that down to the Byram ramp past Byram. Byram is the curve of the river, the current is on the Pa. side and when they realize that, they start trying to paddle over and most of them go toward the wing dam.

M.L. Haring – And these aren't Mr. Crance's?

Mr. Maurer – These are not.

M.L. Haring – Why are we discussing it?

Mr. Maurer – Because we're talking about the safety of the whole operation, and if the egress was where they typically were, people would be getting out on a safer part of the river.

M.L. Haring – Why aren't they?

Mr. Maurer – Because of the commercial operation the state is trying to run. The river was pretty high this year and they observed people getting caught going over the wing dam and search and rescue was out better than a half dozen times, and they've had several fatalities. The change is not allowing the passive users to use the river the way they used to.

M.L. Haring – Is there a reason why they are not permitted to exit at the same place?

Mr. Maurer – The reason is there's no parking because when you put the buses in there, there's probably enough space for a half a dozen cars versus the 20 that used to be there.

M.L. Haring – So they park down by the river, walk all the way up and then take the tube down? How is the car getting down?

Mr. Maurer – When you're not a part of this, it takes a couple of cars to do that or whatever they normally do. He would like the Township of Kingwood to think about the Boards role in what may happen from a liability standpoint because you're pushing thousands of people to use this part of the river and as a township resident the state is running a commercial operation that they really don't have any business promoting. They should let the passive use of the river go by. Thank you.

Mr. Hoffman asked if his client could respond to that unsworn testimony.

D. Pierce – Let me address the sworn aspect. Mr. Maurer please come forward again.

D. Pierce swore Mr. Maurer in who affirmed that the testimony he gave is the truth, the whole truth and nothing but the truth.

Mr. Crance in response to statements made by Mr. Maurer about the safety and egress stated the following: As far as the exit is concerned the DEO sent him a letter that they have the funds and are going to revamp the entire exit area. They are going to put 35 parking spaces in on a 45degree angle which is more than what it used to be. They will have a cut in so the buses will be able to turn straight in and won't need to back up. He didn't ask for the 100 thousand dollar fee and be taken off the road and put into a little area, but he sees that working with them they're going to do a lot to increase safety at the exit. They are also re-routing the bike trail at the exit so bikers won't have to deal with the tubers. It's three- fold: Re-routing the bikers, allowing buses to pull straight in and out and 35 public parking spaces. This is going to be done by the DOT with only one way in and one way out and it's going to be safe.

There is no more volume in the river than there used to be. His competitors in Pa. have given up customers to them on the Jersey side. His parents' house is right at the entrance of the Pa. tubing business and that has increased the value of their home. He's grown up in the area and is a former marine.

Safety is their number one concern. He wanted a 50 year stretch without one drowning but unfortunately the company had one last year. This year they closed due to certain river heights and people asked him what height he should close it and they were told 5 feet above normal is the cut off. His competitor goes to 10 or 11 feet, which is 7 to 8 feet above normal. He proposed flags by the water for the public. There was 4 drownings and every one of them was when he was closed. They've helped hundreds of people a season that you don't hear about because they took care of the problem.

The drinking, the alcohol, nudity aren't his customers. They don't allow food and alcohol and they can't bring anything with them. They are given a free meal midway. They pick up the trash at the hot dog stand and also the trash from people that come by and picnic. They don't mind it because they love the people and the river and want to keep it clean. They're stewards trying to provide tourism and let everyone enjoy the natural resource.

He heard the comment from Stockton about what the river is, but the fact of the matter is, it's the DEP and States mission to work with the local communities to promote access to federal waterways. The Fish and Wildlife told them that they're proud of their operation because without them people wouldn't have the exposure to the river. There is no way to get people to the river without having an access and exit. They maintain that they're clean, pay a lot of money to do the site and are paying a lot of money for all of this, it's vital to them that they get approved.

Randy Lerch pointed out good points. He took a picture of the busiest day and the reason is when the buses come down and make a left turn in to the boat ramp, they have to wait for cars to come out and so they get jammed up there. If they go up the river a quarter of a mile, they'll have an unimpeded driveway to pull through and out. It's going to make it much safer and improve on safety and viability.

Mr. Crance stated that he doesn't know if they can survive without the variance, and he knows he said in the past he operated without it, but with all the changes this has become vital. He sat on the property for 3 years but when he got notified that he had to make changes – he pushed for this variance. He spent \$70,000 so far and that's not including the \$80,000 he paid for the property.

He's (Mr. Crance) not doing things without permits even though people have alluded to that. The roller rink has offered so many services to this community and so much good. He's offered so much to the community for the past 10 years. It's horrible that he's getting attacked for a 12 week business with only 6 busy weeks from mid July to mid August.

He (Mr. Crance) respects the Fee's, and wanted to address their concern. They're right about the cars backing down the hill, it is a mess. They've now learned that when the parking lot is full they need to place a guy with a stop sign and they tell the people that they need to come back in an hour. They're not allowing cars to back

up past their driveway and the buses to go the wrong way up the hill. They've addressed the Fee's concern on that. They (Fee's) mentioned someone crossing their property and that was 10 years ago. The next day he placed “**NO TRESSPASSING**” signs along the treeline, and people are not permitted to walk up and down the hill. Mr. Fee has never addressed that since, verbal or written, so we resolved the hill problem.

Gary was concerned about the cars passing the buses on the highway, it's illegal to pass on the shoulder. Maybe we can ask the township to put up a sign that says - “**No Passing on Shoulder Children at Play.**” He's worried about his grand kids and seems like a really nice guy.

Randy is concerned about the boat ramp and his access. He should be on his side because this will move the traffic off of the boat ramp. He won't see the buses turning in and out because they're moving away from his house. Randy at the end of September posted on his Facebook that he was spending the day with his dog out on the river, and on my (Mr. Crance's) island in the middle of the river. It's ironic to be here fighting this and then using my island in September. Mr. Crance has a picture of it. He likes Randy and really don't mind him using the island.

He worked with Diana Evans for years and purchased all of their marketing materials and T-shirts from her. It wasn't until they stopped buying from her that she went like this. I just heard someone say “cheap shot” from the back, but it's ironic that we helped build a business buying stuff from her for 5 years and now she's spending money trying to get him shut down – that's the cheap shot.

They're a small business and they want to address concerns that everyone has. For 10 years he has never received a negative thing from the township or public with the exception of one from the Fee's that they addressed.

The last concern was the bike trail and the State and DEP commissioners told their concession agreement director that they're considering a trail from his property right to the river, so no one will have to walk down the bike path. He really don't want his customers walking down the path but they have to, and they have as much right as anyone else does.

He wants to work with the community, address their concerns and have it as peaceful and as well run as possible. Safety and protecting the environment is their number one concern. His family has done this their entire life and he's done this since the Marine Corps. They employ 70 people, some of which are local. Thank you.

Mr. Hoffman – One of the things you see is a commercial enterprise working with state government to make the access area more organized. Mr. Bolan, their planner, testified that they're better organizing this recreational activity. Mr. Crance's testimony stated that they don't allow alcohol and they don't allow people in the water with food, plastics, etc. This recreational commercial enterprise will be better organized through the parcel with the 3 buses queuing on this parcel instead of sitting on the shoulder and jamming traffic.

Mr. Hoffman – It's 9:55 and he's put his case in and it seems that we've heard from the objectors and their witnesses.

M.L. Haring – Was that your closing statement.?

Mr. Hoffman - I do have a closing statement and specifically for the record will read the exact variances they're asking for. By the time it's read and we engage in dialogue between the Board and professionals and you vote – will that be accomplished in 34 minutes?

M.L. Haring - We lost 15 minutes before trying to download something that wasn't your fault, for right now we're going to take a 10 minute break.

M.L.Haring – We're back on record. I would like to ask one more person to come up. I missed her hand up earlier.

Ms. Niemann gave her mailing address and stated she was honored to serve as an elected official for 6 years, her term ending last December. She became acquainted with DRT during her time as an elected official while they were trying to negotiate an agreement with the State of New Jersey DEP and such.

She was struck with the Crance family work ethic and commitment to the community they displayed. A man, his wife and 4 boys working so hard together to make a business run. Imagine navigating the owning of a piece of property on the river, having the DEP interacting regarding the input and out take and the DOT regarding parking on Route 29 and the parking spaces there – all very complicated.

To further complicate it the roller rink parcel discussed doesn't have the proper site plan review that they would have liked for him to have had up there. That's not DRT's fault, because he was told it was alright. There is no way for him to go to the Township of Kingwood for approval for the roller rink until the outcome of this variance application is determined.

This business operates for a very limited period of time. You saw the days on the calendar and the client counts. There's a very limited number of heavy days.

There hasn't been discussion on the staircases that will be in place to get people in and out of the river, and that will reduce the amount of degradation on the shoreline and banks of the river. This will be significant and incorporated into the plan for next year.

She stands in full support of the benefit this business brings to Kingwood Township, the people it employs, enthusiasm for recreation and for the appreciation of the outdoors that it gives the people.

The concession agreement makes the granting of the variance absolutely critical. The agreement will require DRT to pay a substantial fee to the State of New Jersey.

Thank you for your time and consideration.

Mr. Pisauro thanked the Board for the opportunity he has had over the last several months. The Board's attorney will tell you the standard that has to be met for the applicant to get the variance. Mr. Pisauro stated that the applicant has not met that burden and they have to meet various things, - general welfare, etc. One of the key things is the reduction of the bus traffic and whether or not it can be reduced. Mr. Crance stated at the June meeting that he's currently loading 3 to 4 buses a weekday and 8 to 9 on the weekends and hopes to be running 2 to 3 on a weekday and 5 to 6 on the weekends if the variance is granted. Is this really a substantial benefit to this community by that reduction?

Their traffic engineer testified that Route 29 is in good shape and this application will have no impact and the level of service will still be A or B whether this variance is granted or not. They are seeking to reduce the bus traffic from an operation that is in the AR-2 Zone where this is not permitted. They are asking you to grant the variance that will be a substantial benefit in the reduction of activity that should not be occurring under the zoning ordinance. He suggests that this is not an appropriate grounds.

Their planner stated that this met the special needs by providing access, but this is not actually providing any additional access to the river. The parcel is landlocked and he doesn't believe they've met the special needs.

The applicant also needs to prove that this isn't going to have a detrimental impact. The Master Plan requires the area be protected, to identify and protect undisturbed hillsides, ridge lines and vistas, particularly the Delaware River corridor, and the applicant hasn't done that. No testimony has been given that their facility

won't have that impact.

No testimony has been given that his clients view of the scenic byway will not be impacted. You heard testimony from his planner and traffic engineer that this will have some impact on the path and neighborhood.

The applicant has tried to have it both ways when questions were raised about the off site parking, but there is a parking requirement in the Township Ordinance. The applicant indicated that, that is another parcel but wants to point to the reduction of traffic and point to the use of the Kingwood boat launch as part of the benefit to this project. They can't have it both ways, either it's one whole operation or it's not.

The Township Ordinance requires one space for each user for off site parking. The applicants own sheets show hundreds of users will be there each day. There has been no testimony if they have the parking.

Economic benefit is important and there has been no testimony to the economic benefit to the Township. Court cases suggest that just because there is a lawful use of a property that provides an economic benefit, does that mean that every variance would provide that.

For those reasons, he strongly urges the Board to reject this variance. They have not met their burden. He thanked the Board for their time and consideration.

Mr. Hoffman stated that he doubts that he'll be able to conclude in 20 minutes but he'll start be reading the respective variances that they're asking for, and afterwards he will make a brief argument at the conclusion tonight or the beginning of the next meeting.

Variances and conditions – Pursuant to NJSA 40:55D-70 (d)(1), they're asking for a use special reasons variance, a variance permitting a commercial use of the parcel as a staging area for the water recreation operations of DRT, Inc., where otherwise principal permitted uses are limited to farm and agricultural, detached single family dwelling units, public playgrounds, conservation areas, parks and public purpose uses, churches, cemeteries, golf courses, firehouses, rescue squad facilities, government buildings and family daycare homes.

Under **NJSA 40:55D – 70(c)**, bulk or hardship variances given this lot in particular, **#1 – A** lot area from 7 acres varied to .671 acres. **#2 –**Minimum lot depth from 300 feet to 99.73 feet; minimum size yard from 40 feet varied to 10 feet; minimum rear yard from 60 feet varied to 10 feet; maximum building coverage area from 8% to 33%.

Relative specifically to **Kingwood Township Ordinance -Section 132-53 - “Off street parking,loading and driveways.” Subsection G -”Required parking spaces.”** They are asking that they don't have any required parking spaces on the parcel. **“Subsection I - “Minimum off-street loading.”** - They are asking to be relieved of the requirement of having off-street loading situated on the parcel. **“Subsection E – A variance to the location of parking and loading** permitted parking in a driveway. The half moon driveway provided for on the subject site plan where such parking is not permitted, specifically for the ability of buses to park on the half moon driveway where otherwise it would be prohibited. This is in line with the questioning from one gentleman on the Board who stated that when you unload the passengers, the bus is stopped, so you're parking. They are asking for the right to do that where the Board otherwise prohibits it.

They are open and agreeable to impose conditions pursuant to **Meridian Hospital vs Pt. Pleasant 325 NJ-Super 490, at page 504**, which is **Appellate Division 1999**. They agree to the imposing of the following conditions: **1.)** They will not transact business on the subject property. Specifically DRT., Inc. will not exchange money with patrons on the property. **2.)** Signage placement indicating **“No Patron Parking”** or any other verbiage that the Boards' professionals would prefer at the ingress to the property, as well as at one point along the half moon driveway; at the ingress they will put signage to prohibit people from coming up on

the parcel thinking they can pull in and park. 3.) DRT. Inc., will co-ordinate that only 3 patron buses will be dispatched at a time. Only 3 buses will be sent down from the roller rink to the parcel or from anywhere else to avoid a situation where buses are queuing on Route 29 and the shoulder of the main thoroughfare.

Based on discussions the Board has had with its professionals and any other conditions that we establish, they are agreeable to engage in that dialogue during deliberations.

You have heard from all of their professionals. He highlighted a couple of particulars, the lot is extremely undersized, has concrete on it from the prior structure, has no building envelope and you cannot build a single family home without a building envelope. There isn't much you can do with this lot as it exists now. This is the perfect use of this lot, flat open with some storage on a seasonal basis in the form of tubes, kayaks etc.

When you look at the current permitted uses, although they're asking for a variance, they're very much related to the parks and public purpose uses that are permitted in the zone. They're simply going to use this parcel in a commercial recreation aspect which already exists along the Delaware River at the state owned property and now for Mr. Crance who does the same on a private parcel.

This will organize a use that's already occurring, by improving the traffic. There is no competent testimony that the traffic conditions will deteriorate or aggravate this area because of the variance and site plan they're proposing. It will improve. There will be less buses traversing this area and won't be queuing in the roadway or unloading in the shoulder area.

They're not bringing any additional individuals to this area through this variance. The level of recreational use will remain the same, only more efficient and organized.

Between the concession agreement and this variance, things should improve in terms of general welfare, at this location and will not compromise this particular parcel that a variance is being sought.

Mr. Crance brings valuable general welfare and recreational purpose to this area and through this parcel. It's a safety concern he brings people there and makes sure they are safe, as opposed to tubing privately or by some other vendor on the other side of the river. He polices and organizes his patrons. He doesn't permit them to environmentally compromise the water by bringing food, plastic bottles, beverage wrappers etc. into the water.

This use already occurs on the Delaware River, in this area. They're not increasing that usage just organizing it in a better and more efficient and safe manner.

All those reasons, and in view of the MLUL, and the testimony of Mr. Bolan, he (Mr. Hoffman) respectfully requests that this Board grant those variances that they asked for tonight. Thank you.

M.L.Haring – This meeting is now closed.

P. Stepanovsky moved that the hearing be closed, seconded by D. Hewitt. On roll call to vote.

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

Abstain: None

Absent: None

D. Pierce – Is the Board going to continue and reach a decision tonight or adjourn?

M. L. Haring – We're going to continue.

D. Pierce – Okay. What he would like to do is provide some information to the Board in terms of the standards with respect to the approvals that are required and discuss some of the parameters of what the Board should or shouldn't consider.

The principal application is for a use variance. There are applications for other variances, bulk variances, and other variances from the Zoning Ordinance relating to parking and loading, but the principal relief is a use variance that requires, in order to be approved, the affirmative vote of 5 members of the Board. It's not a simple majority and in order to grant that variance, there must be 5 votes in favor of that variance.

With that said, the issue that's before the Board is a use variance for this particular piece of property, not for the entire operation; not a variance for the roller rink. The effect of the entire operation is not relevant. The operation is governed by the States Concession Agreement. It's occurring on state park property and this Board has no jurisdiction over that. He understands the concerns and complaints of the members of the public relating to whether that's an appropriate operation to conduct, but that's with the DEP and not with this Board.

The issue of whether the roller rink portion of the operation is lawful or not or has approvals or not, is not germane to this. That's not changing as the use of this particular piece of property that the application is for.

The applicant has testified that he acted in reliance upon instructions, directions or actions, that 10 years ago the township took. We don't have enough information to determine whether that's accurate or not; that's not the subject of this application. The question is whether the applicant has met the burden of proof for the granting of a use variance on this particular piece of property.

In the same vein, he would opine to the Board that the beneficial effects related to the rest of the operation, the take out point, the Fairview Road drop-off, the stairs into the river, are not relevant either because that's from the rest of the operation, and not from the operation on this property. He doesn't think the applicant can say on the one hand well, the rest of his operation is not relevant, except for the fact that you're getting benefits from it through the state agreement. To that extent, he (David) thinks none of those either detriments or benefits are considered because they're not related to the use of this piece of property.

Whether the operation at the roller rink is permitted or not is not within the jurisdiction of this Board, that's an enforcement issue. This Board has no authority with respect to the enforcement of the code. The Board simply considers and acts upon the applications that are before them.

The applicants provision of an area for adequate parking is certainly a legitimate issue for the Board to consider. They're requesting a variance from the parking ordinance and the parking requirements. If there's no area designated for adequate parking on the site, then there has to be some recognition that there is adequate parking provided somewhere else.

If the Board gets to that, the appropriate way to address that issue, if there's an approval, would be to condition the approval upon the demonstration at the beginning or end of each new period of use for parking. Lets say it has a 10 year lease, they would have to come in and provide proof to the Board that he (DRT) has that lease, and at the end of the 10 years he would have to come back to the Board to continue the approval and demonstrate that he has parking that survives after that.

The applicant, in a letter to David of some of their arguments, raised the concept that they thought the Board was considering requiring that the applicant have parking in Kingwood. That wouldn't be appropriate, and he (David) doesn't believe that any member of the Board was thinking that. David can't say for sure because he hasn't discussed it, but if that was the case, it's not appropriate. The applicant can park wherever he has parking and then bus his people to the site if he gets the approval for the site.

In terms of the criteria for the approvals, the applicant has to demonstrate or satisfy both what are called

positive and negative criteria. For the positive criteria they have to show that granting the application would advance one or more purposes of the MLUL.

Mr. Bolan testified about 4 purposes that he thought were being advanced. The objectors planner testified that he didn't think it advanced any of those purposes. The Board will have to weigh the testimony and come to a conclusion.

The negative criteria requires that the applicant prove that the variance can be granted without substantial detriment to the public good, and that involves identifying the public interest benefits that are advanced by the variance; identifying the detriments that would result from the variance, thinking of conditions, imposing conditions to minimize those detriments, and then after considering those conditions, balancing the benefits against the detriments to see which outweighs the other.

They, as part of the negative criteria, have to demonstrate that relief can be granted without impairing the Zone Plan and Zoning Ordinance. A use that's not inherently beneficial, it requires what's called an enhanced quality of proof for that.

The 4 purposes of the MLUL that Mr. Bolan testified about were general welfare, and that's not simply it's a good thing, there has to be some benefit to the community, and as part of that, they have to demonstrate that the site is particularly suited for the proposed use.

The 2nd purpose Mr. Bolan identified was providing sufficient space in appropriate locations for a variety of uses, both public and private.

The 3rd was to encourage the location and design of transportation routes which will promote free flow of traffic while discouraging the location of such facilities and routes that would result in congestion and blight.

He (David) would note with respect to that particular purpose of the MLUL, the applicant would need to demonstrate that the project will tend to eliminate or alleviate a dangerous traffic condition pursuant to MacDonald vs Koch, 197 N.J. Super 134.

The 4th purpose that Mr. Bolan testified about was the purpose that planning and zoning should encourage the co-ordination of public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land.

With respect to the bulk variances and the variances with respect to parking, there's a different standard that has to be satisfied. Basically, that the variance can be granted – the positive criteria is allowed to be granted when there are either peculiar or exceptional difficulties with respect to the development of the lot or exceptional and undue hardship due to either the shallowness or shape of the parcel, exceptional topographic or physical features affecting the specific piece of property, or an extraordinary or exceptional situation uniquely affecting a specific piece of property. With those variances, they still have to prove the negative criteria.

The last thing is with respect to the negative criteria and the substantial requirement that demonstrates no substantial impairment of the Zone Plan and Zoning Ordinance. You had 2 experts that have testified, one on either side, and the Board is entitled to select which of those it believes.

These are his instructions, unless there are any questions.

M.L. Haring – We've had a lot to digest over the last several months. It was a industrial gas company, in the past, with truck traffic and noise throughout the year. The present owner is requesting to store recreational equipment on the site and use it as a drop off area for his customers, for only 3 months out of the year.

The existing concrete foundation is going to be used for the storage area, there will be no wells dug, no septic system installed, and minimal disturbance to the lot.

Traffic has been a concern, but in her opinion, there will be an improvement to the traffic patterns judging from the exhibits presented and testimony given.

The Delaware River has long been an attraction not only to local residents but for summer vacationers who want to enjoy the beauty of the area. She sees the benefits of Mr. Crance's business, he runs an organized business and has trained safety personnel to respond to emergencies.

As far as the traffic concerns to the roller rink, David summed that up for us. She feels that that's something more for the people that use that driveway to settle amongst themselves, not the Board.

She sees that the township will benefit from the increase in property taxes from residential to commercial, and thinks this site is going to look a lot nicer than it does now. She doesn't believe that the property will create a detriment to the residents or the general public by granting this.

T. Ciacciarelli – He's ready to vote and has no further comments.

P. Stepanovsky – This compared to what was there, HIG, has improved over that. As far as the scenic view of the people on the other side, they could have bought the property and had the same view. The fact that they are going to improve this property, make it cleaner and nicer is a good thing.

The traffic from what he's heard from testimony, is an improvement over what's there at the present time with the buses parked on the driveway because they can't get into the roller rink or go to the boat ramp. That's a positive.

The negative criteria is that they have to use the boat ramp, at the present time, but everybody has that right. The tubers have the right to walk down the river and jump in someplace else. As far as he's concerned, the community is going to benefit by the organization that this property will give it.

J. Laudenschlager - He thinks the lot is small for what's planned and doesn't think that the volume of people and buses will flow as good as it sounds. He thinks that just being visible from Route 29 will cause a lot of gapers and add to more congestion, and doesn't think it's fair to the residents close to it.

D. Hewitt – This is probably the hardest or longest projects that we've had to deal with since he's been on the Board. He has to look at some of the facts, changing the property from residential to commercial. It was a HIG site, very small lot, and it has changed over the years. His decision was kind of made up when the township put the property up for sale. It could have been open space contiguous with the state park, but it's not.

When you get into the wetlands issues and some other things that could be a detriment, most or all of those were man made, starting with the railroad. That's what made most of that area wetlands.

He grew up here and spent a lot of time around that site, so he knows it fairly well and doesn't see a detriment. He thinks the organization is what's needed, the conflicts we're having are from tubing that isn't controlled. This is a controlled situation and the state has endorsed this with a lease agreement. The lease agreement outlines everything that's needed to run that operation, and it's an asset to have Mr. Crance out on the river for safety concerns. He doesn't have an issue with it.

L. Frank – No comment, he's ready to vote.

A. Planer – He's concerned that we're trading one problem with another. He agrees that it will probably help with the car traffic, but we're introducing foot traffic on the path that didn't exist before. We say that people are coming here anyway, they're on the river anyway, but we're not putting 30,000 people on the path with tubes in their hands today.

His concern increased when Mr. Crance said, quote “ I would argue tubers have more of a right to the path than bikers and walkers,” because there are other places to bike and walk.

The other thing that concerns him is we keep saying it's 6 weeks, what's the big deal. Well, it's the same 6 weeks for everyone. Those 6 weeks and weekends are prime for walkers and bikers, too. You can say it's not our jurisdiction, but it's part of the community and it's definitely part of the proposal. That's his concern, other than that, he's ready to vote.

C. McBride - As he looks at the business, he agrees with the thoughts of the organization and making the river safer for people who use it for recreation, specifically tubing, and thinks there's a distinct benefit for the DRT, and it adds to the recreation purpose of the river.

His big concern is that this small lot, with the way the bus loop is laid out, where it's going to be at the entrance to the township, and what signage will be required to prevent people from ducking into this, will go against the scenic area, and the scenic designation that the area has been given, and will actually be an eyesore to the beginning of Kingwood Township coming out of Frenchtown. He can see that they have to require no left turn signs, no right turn signs on each side of Route 29 to prevent people from going into this lot.

He's concerned that the maneuvering of the buses in and out of this lot will become more difficult than what the applicant is really planning. He thinks the DOT will exert influence on how traffic will go in and out of the lot, and the arc that the driveway has comes within feet of the boundary line because of the shape of the lot.

He doesn't see how at some point somebody isn't going to say that they have to park on the lot because I'm an employee, or have to get out of there, or someone with a disability has to get onto the lot. He brought this up as a concern. If we waive the entire parking concern, he agrees with Mr. Pierce that we would have to be concerned that there's sufficient parking elsewhere. If the parking is in another area, we may lose the benefit immediately, the small number of buses that have to come off the road by the parking being in another area further away. He doesn't see that there's any closer place than the roller rink parking lot to the drop-off area. Those are his concerns.

M.L. Haring – She'll propose or someone can propose to approve this variance with conditions, and if we're going to head toward approval, we need to discuss the conditions. What are the Boards feelings on this? Do you want to make a motion, Charlie?

C. McBride – No, I don't. Do we need to vote on each of the different classifications of variances that have been applied for, individually, or as a group, or is that at our discretion?

D. Pierce – It's at your discretion.

M.L. Haring – We would need you (David Pierce) to break each one down for us than.

D. Pierce – He would suggest that the parking variance is integral to the proposed operation at the site. If you're granting the use variance, you're going to end up granting the parking variance.

M.L. Haring – So there's no sense in separating them.

D. Pierce – Right. If you're going to grant them, you'll need to discuss the conditions. It may be appropriate

to take a straw poll of the Board to see how many members are willing to grant an approval based upon conditions. If there are not enough members willing to grant an approval based on conditions, then it's a waste of time to talk about the conditions.

M.L. Haring – Well?

T. Ciacciarelli – He would like to see the condition put in that you need parking wherever before he goes with approval on it.

P. Stepanovsky - I'm for approval, but off-street parking has to be discussed and settled before we do the final.

J. Laudenschlager – Against the application.

C. McBride – His decision to vote for the full application would be determined by agreement on very detailed conditions on parking and signage for access and egress from the lot.

D. Pierce - Anthony wouldn't vote, but if someone abstains he would vote.

L. Frank – He's a no vote.

D. Hewitt – He's for it.

M.L. Haring – She would vote yes but with conditions.

D. Pierce – It appears there would be enough support for the application with conditions. What he would suggest for conditions are, that the applicant verify the location and provide documentation of the proper closure of the septic tank. That's an issue that has never been resolved.

He would suggest that the applicant would agree to a condition that no more than three buses be dispatched to the property at any one time from their parking area and that the applicant would agree to signage prohibiting parking at the drop-off site.

M.L. Haring – No business is transacted on the site.

D. Pierce – Right. He's trying to deal with the signs right now. Signage would prohibit parking at the site, a right turn onto the property southbound on Route 29 and prohibit a left turn out of the property going north.

C. McBride – He was more concerned about trying to make a right turn into the egress. If you're coming northbound on Route 29, there should be a “No Left Turn” sign so you don't try to turn into the egress.

Mr. Hoffman – How about a “Do Not Enter” sign?

P. Stepanovsky – The buses are going to make a left turn.

C. McBride – But you don't want people making a left turn. He's not concerned about the buses because the drivers of the buses are going to know what they're doing. He's concerned about the people who are driving down the road and they're going to see this enterprise, and let's say no buses are in there, they're going to make a left turn into the egress.

D. Pierce – The suggestion was to put a “Do Not Enter” sign.

T. Decker – He would agree with the use of the “Do Not Enter” sign. The “No Left Turn” sign could be

interpreted for either entrance. If you put the “Do Not Enter” signs, that would apply to the bus drivers as well as the general public. He thinks that would be appropriate signage.

C. McBride – We need a sign on the entrance.

T. Ciacciarelli - “Buses Only”?

C. McBride – Something that says we don't want the casual person making the turn.

Mr. Hoffman – We would suggest “No Patron Parking”.

M.L. Haring – And “Private Property”.

Mr. Hoffman – Whatever you want and you think is the best in terms of size, color and verbiage.

C. McBride – Isn't that determined by the DOT? We may not have a lot of options for that.

Mr. Hoffman – Whatever the professionals come to a conclusion on, we'll do.

D. Pierce -You'll be placing it on private property, so it wouldn't be determined by the DOT.

C. McBride – You don't believe they'll be signage required on the east side of Route 29 opposite the property, like “No Parking”?

D. Pierce – That's a DOT issue and nothing this Board can control.

M.L. Haring – But on the property itself, either “Private Parking” or “No Patron Parking”.

Mr. Hardcastle – How about “No Parking Bus Drop-Off Only”?

M.L. Haring – They need to be professional signs.

Mr. Hoffman – Correct. They'll provide renditions for the Board professionals to approve.

M.L. Haring – Very good.

D. Pierce – As mentioned before there would be no transaction of business, no exchange of money, no signing of waivers, no distribution of food or drink at this property. The tubes and equipment would be stacked no higher than 6 feet. The approval would be limited to the duration of the existing parking arrangements, and at the time that those existing parking arrangements are changed or expired, the applicant would be required to appear before the Board to demonstrate adequate off-site parking.

It would be subject to receipt of DOT approval. It would be subject to receipt and submission of all other approvals for use of the river for tubing. There was discussion about other different agency approvals pursuant to the wild and scenic designation, and the applicant agreed to provide that. There would be limitation that patrons would not be allowed to bring alcohol or food or drink to the site. The testimony was they do not allow patrons to bring their own food or drink.

The hours of operations would be 10 to 3 weekdays, 9 to 4 weekends.

Do you want a condition regarding the idling of buses? There was some discussion prohibiting that. Charles is shaking his head yes.

C. McBride – I would like to see a sign for that.

D. Pierce – Asked Charles McGroarty, planner, a couple of questions and wanted to make sure that the plans have been revised to address the concerns that he had with respect to marking the trees to be removed, and he believes they have, the removal of the concrete foundation, a specification of the treatment of the area at the side of the driveway.

C. McGroarty – They have, yes.

D. Pierce – Then there's the typical conditions of approval, no further action until the escrow is up to date and all the standard issues of approval.

The only other condition he would contemplate or suggest to the Board, and he's not suggesting it forcefully, but it's something you may want to consider, and the way he'll phrase it is the applicant shall make best efforts to obtain approval for the direct access path from their property across the recreational path to the river. That would help alleviate a lot of the concerns that Anthony had with respect to the impact on the other users of the path.

Mr. Hoffman – They certainly would agree to that.

D. Pierce – And if and when it's obtained, provide documentation of that to the Board.

Mr. Hoffman – Absolutely.

D. Pierce – Those were the conditions he had.

C. McBride – I would like to add a couple more. We're trying to make sure that patrons don't come into this, there should be no signage for the business, no balloons.

Mr. Hoffman – No advertisements.

C. McBride – Right. Low key. No advertising, because that's going to attract cars to come right in there, and that's the biggest concern he has, that you're going to have cars in the driveway.

Mr. Hoffman – We agree to that.

D. Pierce – On one of the telephone poles is a sign for the operation, and that should be removed.

C. McBride – Another condition, because we're emphasizing that this is seasonal work, that from October 1st through May 1st, there should be no tubes, kayaks etc. on the property. They have to be all off the property for the wintertime.

Mr. Hoffman – Agreed.

C. McBride – This property has no electricity on it, correct?

Mr. Hoffman – Correct.

C. McBride – We should also indicate that we don't want 17 generators down there. We want to make sure we have a limitation on the amount of portable power we are going to allow.

Mr. Hoffman – That's fine.

D. Pierce – He believes the application on the site plan specifies one generator. They would have approval for the one generator that's depicted on the site plan.

C. McBride – One generator with a maximum of 10 KW.

Mr. Hoffman - That's plenty according to his client. That's agreed to.

C. McBride – We discussed that the septic system will never be used.

D. Pierce – It will never be used, and they have to locate it and seal it, decommission it in accordance with the proper procedures.

C. McBride - And they'll never activate the well on this piece of property.

D. Pierce – There's not one proposed, and if they want one they would have to come back to the Board for additional approval.

C. McBride – Okay, those are his concerns.

M.L. Haring – Can anybody think of anything else while we're discussing all of these? Then we'll move to vote.

D. Pierce – you would need a motion subject to those conditions.

P. Stepanovsky made a motion to approve with the conditions noted, seconded by T. Ciacciarelli. On roll call to vote.

Aye: C. McBride, D. Hewitt, P. Stepanovsky, T. Ciacciarelli, M.L. Haring
Abstain: None
Absent: None
Nay: L. Frank, J. Laudensch

D. Pierce – The motion carries by five to two. The next part would be a motion for preliminary and final site plan approval. All of the issues relating to the site plan have been discussed as part of the application. There should be no issue on that. So a motion to grant preliminary and final site plan approval.

M.L. Haring – Will someone make that motion?

D. Hewitt made a motion to approve preliminary and final site plan, seconded by P. Stepanovsky. On roll call to vote.

Aye: C. McBride, D. Hewitt, P. Stepanovsky, T. Ciacciarelli, M.L. Haring
Abstain: L. Frank, J. Laudensch
Absent: None

M.L. Haring thanked the Board for all of these months.

Mr. Hoffman thanked the Board.

OPEN TO PUBLIC:

None

COMMUNICATIONS/REPORTS:

Chris Citgo -Remediation Report

Letter from the State of New Jersey- Re: High Oak Helistop. Discussion followed.

2014 Budget request, after discussion it was decided to ask for \$7,000 and two (2) microphones. C. McBride made a motion to approve, seconded by D. Hewitt. All in favor

Kingwood Township August 1, 2013 minutes.

ADJOURNMENT:

L. Frank moved to adjourn, seconded by D. Hewitt. All in favor. Meeting adjourned at 11:10 PM.

**Barbara Wilson
Secretary
Board of Adjustment
King wood Township**