

**KINGWOOD TOWNSHIP  
BOARD OF ADJUSTMENT**

**June 10, 2015  
MINUTES  
7:30 PM**

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

**PRESENT:**

D. Hewitt	L. Frank
M.L.Haring	C. Ostergaard, alt
P. Stepanovsky	J. Laudenbach
B. Wilson, sec	T. Ciacciarelli
C. McBride	T. Decker, eng
D. Pierce, atty	

**ABSENT:**

**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:**

The May 13, 2015 minutes was approved with a motion by D. Hewitt, seconded by J. Laudenbach. On roll call to vote.

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

**RESOLUTION:**

None

**NEW BUSINESS:**

**Hearing Continuation - Delaware River Tubing – Block, Lot 21**

D. Pierce – The applicant was to re-notice. They have provided the proof of notice and have satisfied the requirements and the Board may exercise jurisdiction and continue the hearing. The court reporter is absent tonight and David confirmed with them either Monday or Tuesday that they were going to be here and as you can see there is no court reporter here. We are going to have to make sure that everything is said clearly and clearly referenced for purposes of the record since there is no stenographer here.

Mr. Hoffman asked if the recording was digital or analog.

D. Pierce – He has no idea.

Mr. Hoffman noted that they changed the orientation of the parking – Sheet 3 of the Site Plan.

D. Pierce – Mr. Hoffman when you say this direction – you're referring to north-south?

Mr. Hoffman – Previously east-west, now north-south. They also moved the bus parking to the other side as well.

Randy S. Kertes, Environmental Expert, was sworn in by David Pierce.

C. McBride – Madam Chair, may I ask a question, please, Don't we normally have, after the site engineer testified last week, a question and answer period of the site engineer?

D. Pierce – You had some questions and if you have more you can certainly ask those.

C. McBride – Weren't we supposed to open to the public also, to ask questions?

M.L. Haring – Not at that point – when we're through then the property owners within 200 feet can ask any questions they have of the professionals.

C. McBride – I thought we had done that after each section.

M.L. Haring – That was an exception at a previous hearing.

C. McBride – Okay.

Mr. Hoffman – All of his professionals will be available.

Randy S. Kertes gave his educational background and has testified before many Board of Adjustments, including Kingwood in 2013. He was accepted as an expert witness.

Randy Kertes viewed the application and on behalf of the applicant completed a “Environmental Impact Assessment” in accordance with the Kingwood Township Ordinance, property located on Block 6, Lot 21, 8.21 acres in size. Most of the property is used for agricultural purposes along with a commercial establishment along Route 12. This property lacks surface water bodies, flood lands, wetland buffers, 100-year flood area, steep slopes and highly eroded soils. In addition, according to NJDEP and the search they did, the property lacks habitat threatened and endangered species. Properties listed as having primary agricultural soils which are currently farmed, credit the applicants low impact activities that are from late June through early September. It is his professional opinion that this activity will have minimal, if any, impact. Now, he is going to take us through some diagrams.

Please speak in the microphone.

M.L. Haring – Can we take 2 minutes. (Court Reporter arrived at 7:45pm)

## **APPENDIX A**

**EXHIBIT A-38 – Figure 1 - Site Location/USGS Map** (Gently sloping from west to southwest)

**EXHIBIT A-39 - Figure 2 -Tax Map**

**EXHIBIT A-40 - Figure 3 – Surface Water Bodies (Absent)**  
**EXHIBIT A-41 –Figure 4 - Wetlands Map (Lack of wetlands on site)**  
**EXHIBIT A-42 –Figure 5 - Soils Map (Red clay)**  
**EXHIBIT A-43 –Figure 6 - Steep Slopes (Lack of steep slope)**  
**EXHIBIT A-44 - Figure 7 - Depth To Seasonal High Water Table**  
**EXHIBIT A-45 - Figure 8 - Farmland Capable Soils (Property has Prime Farmland Soils)**  
**EXHIBIT A-46 –Figure 9 – Critical Habitat Forest And Grassland ( Shows Priority Species)**  
**EXHIBIT A-47 –Figure 10 –NJDEP Landscape**  
**EXHIBIT A-48 –Letter of Interpretation from NJDEP, dated May 26, 2015 stating the following: “freshwater wetlands and waters are not present on the referenced property. In addition, the Department has determined that no part of the above referenced property occurs within a transition area or buffer as designated in N.J.A.C. 7:7A-2.5(d) and (e).”**

Randy Kertes had no further comments relative to the discussion that they had with the Board during the first nights hearing.

No questions from the Board.

T. Decker – Just a few questions relative to his letter of May 11, 2015 that has to deal with the EIS. One of which, page 10 of his letter item (I) which states that DRT will not operate on extreme wet weather conditions, etc. What about if you have rainfall on a Friday and no rainfall on Saturday – what would the conditions of the soils on this site be after a heavy rainfall the following day?

Randy Kertes - If a rain event is substantial enough, a certain gauge he believes it's 8, they still don't operate. He was at the property numerous times last summer. Pictures taken last year of the operation were displayed. The main parking areas seemed to hold up really well.

**EXHIBIT A-49 – Shows stubble after hay d**  
**EXHIBIT A-50 - Shows grass growing**  
**EXHIBIT A-51 - Shows grass still holding up well**  
**EXHIBIT A-52 - Kayaks**

Randy Kertes noted that his understanding is that the biggest concern is the roadways which seem to have the biggest traffic, but soils are resilient and they can be revived. What would be a good idea is, and the applicant would agree, would be to work with the HCSCD and after every year, the roadways get redeveloped, seeded, mulched and would re-establish themselves after the seasons over. He gave a suggestion of memorializing that requirement. He would like to keep the site green and with asphalt/gravel, if the applicant moves, they would have a road forever.

T. Decker – Have you recently been to the site at all?

Randy Kertes – About an hour and a half ago.

T. Decker – What's the condition of the travel-way that was used last year? Is that all fully vegetated?

Randy Kertes – About 40 to 50% covered with grass.

T. Decker – Was it tilled and seeded at the end of last years operation?

Randy Kertes – It was not.

Mr. Hoffman – In that regard, Madam Chair, a conversation they did have after the first hearing was an escrow

for an engineer from Van Cleef, Mr. Decker, whomever, to inspect the site for compliance purposes relative to whatever conditions the Board is pleased to put in an approval. After the first hearing he visited the site with his wife and the hay was stubble length and when he saw the pictures from Mr. Deckers report it was remarkable to him. They would treat the condition as Mr. Kertes suggested with seeding and tilling.

Randy Kertes – They agree with the HCSCD recommendations.

T. Decker – Another question that he has is from his Review Letter, dated May 11, 2015, page 11, item (n) which states, ***“Applicant should address the potential environmental impact of leaking fluids from vehicles parking in the grass parking lot and future farming operations.”***

Randy Kertes – Most cars that show up are newer vehicles so he would make the assumption that they would leak less. Cars do release oils and greases and in this circumstance the applicant can inspect the site. From a more practical standpoint there are natural bacteria in the existing soil and grasses and through time it would DE-grade the oils /grease, and the stubble will act as a filtering mechanism.

No questions from the Board.

Jay Troutman, traffic expert, was sworn in by D. Pierce. Mr. Troutman gave his educational background and stated that he is a licensed professional engineer in New Jersey and Pennsylvania and has qualified and testified as an expert, including this Board, over 100 times. He was accepted as an expert.

Jay Troutman stated that he submitted a report dated April 30, 2015 summarizing their traffic analysis. From a traffic standpoint and looking at this as a use variance, first thing you know is that you have a large piece of property with the opportunity to design the generous areas you need to intake the vehicles into the property, park the vehicles and to circulate the buses. Another point from a traffic impact standpoint is that you have a temporary seasonal use and 8 months out of the year you have no traffic impact. Having the site located along a large highway is another ideal situation for a site like this because you know during the summer you'll have those peak design days you'll need to look at. Historical data from the operator shows that you'll probably have about 15 to 20 days during the entire operating season you'll be concerned with. Overall he thinks this large property in a highway it's located on allows this use to operate safely and efficiently. The applicant has operated safely on the site for one season. The compatible traffic patterns allows two uses to be compatible on the site. In his opinion, the site is well suited for the proposed use from a traffic standpoint. The limited traffic impact it generates on an annual daily basis is not going to have an adverse impact on traffic conditions in the township.

Jay Troutman – In terms of existing conditions, you have this three lane section of Route 12 along the site frontage. You have two travel lanes going eastbound and one travel lane going westbound . There's a 50 mile an hour posted speed limit. There is some roadway curvature but you have adequate site distance along the frontage for vehicles on the site to view oncoming traffic. They have existing driveways that have been in place and demonstrated that they can operate safely over time. In times of traffic impact this site would have activity from June through September. The peak operating times for weekends in the summer would be in July and August. This business is driven by weather so that's a major factor of what happens here. From the summer of 2014 if you look at the pattern of people arriving to park, the vehicles arrive over the course of several hours in the morning and early afternoon and depart over several hours throughout the early/late afternoon period. During most weeks of the summer, there is at least one day, if not several, that the business is closed due to inclement weather conditions or high water on the Delaware River. Last summers data there were only 8 weekdays the entire summer where the number of vehicles parked at the site exceeded 100 and those occurred in July and August. There were only 5 days the entire summer (3 Saturdays and 2 Sundays) that the vehicles parked, in July and August, exceeded 200. They did an analysis of the traffic impact, in terms of whether an NJDOT access permit would be needed. When you have an existing driveway system like they

do, and you have a plan that doesn't propose any physical activities that require a state permit as long as the traffic impact doesn't generate within the confines of significant increase in traffic, they are permitted to utilize those existing driveways for an additional use. They did an analysis and sent it NJDOT to show them what their activities are during the highest Sunday last summer and they found that it doesn't generate a significant increase in traffic that would necessitate a new NJDOT permit.

Jay Troutman- In terms of on site parking and traffic circulation, they gave careful attention to how the site would function. They don't want to create any issues along the state highway and the site is very well designed to put vehicles very deep into the property. The same with the bus intake that comes in toward the back of the property no where near the opening on the highway.

Jay Troutman- In terms of loading this parking area, it was discussed at the last hearing that due to the fact they're parking on a field the parking could be rotated between the aisles and not impact any particular area very heavily. This new plan is very efficient and safe for pedestrians because they can load all the cars in a north to south direction and fill up the aisles from south to north and as the pedestrians are getting out they are not encountering more cars that are filling in from the north of them.

Jay Troutman – In summarizing, the site has adequate roadway capacity being along the State Highway and a good sight distance to handle the traffic even on a peak day. It doesn't generate a “significant increase in traffic” as defined by the NJDOT. The site plan is properly designed to accommodate the efficient intake of vehicles and flow of pedestrians to the buses.

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

C. McBride – On this diagram and the entry point for the buses, when the bus makes the left turn off of Route 12 onto the property – what is the clearance for the wheels as it turns onto the driveway? It looks like you have them coming right at the corner.

Jay Troutman – That driveway was designed to exactly fit that bus turning template. Now that template that's on there is conservative, and what he means by that is it seems some level of speed and typically that bus is going to be coming almost from a stopped position on a gap in the Route 12 traffic. Even if it was a free flowing movement that driveway has been cut in there exactly to fit the turn of that bus, just like the buses that came in last summer.

C. McBride - So there's no chance that that's going to move towards the west and cut that corner. You're not going to have buses cutting that corner. He's looking at right where the bottom of the L, if you take the L = 356 you go straight down from the L where that black box is there, you have them turn right across that point, there's no room for error.

Jay Troutman – He thinks actually the room would be to the east a little bit, if they needed to do a little more gravel to the east, they could do that. That was how the turns were taking place last summer and how it's designed to happen in the future.

C. McBride – Okay. Route 12 at that point is three lanes. What is the designated purpose of the middle lane of that highway?

Jay Troutman – The right lane is for moving traffic and the left lane for somebody to pass.

C. McBride -Why would they (DOT) put two lanes in this part of the highway ?

Jay Troutman – He don't know.

C. McBride – Wouldn't it be because there's a hill to the left from the west that cars are coming up and they'll be slower traffic going up the hill so that the left lane is there to pass the slower traffic.

Jay Troutman – Could be. Typically they try to get two lanes in wherever they can. I've seen that happen on Route 206.

C. McBride – I'm sorry, but you gotta be kidding me if you don't know that piece of highway there. You have trucks coming up from Frenchtown, there not going to make it up that hill and you have to pass them on the left, so what you might have is cars coming up there passing slower moving traffic in the right hand lane on the left and all of a sudden they're going to come up to buses stopped in the left lane.

Jay Troutman - Nobody said I didn't know that piece of highway he's been on that piece of highway for awhile. If there's a bus obviously stopped to make a left, which will happen on occasion when the sites open, then you wouldn't be able to pass in that area, that's perfectly acceptable to make a left from that lane. It's not a restricted lane where you can't make a left into a driveway.

C. McBride – But you're adding the traffic to this highway to potentially cause more hazardous conditions both from buses and from cars.

Jay Troutman – Not necessarily, this is a safe relatively low volume section of highway that these buses have already used in the past and it doesn't create....

C. McBride – The buses were using this piece of property with proper permission and variances?

Jay Trout man – Did I say that?

C. McBride – I'm asking you that.

Jay Trout man – Not that I'm aware of.

C. Bride – That's a dangerous piece of road- he drives it a lot. You can be coming up that highway and all of sudden get a slow moving vehicle on the right side and have to move to the left. You're gonna be in trouble if there's a bus sitting up there with a line of cars, if you think of it, a bus could be sitting there waiting and there could be a line of cars behind it and that line of cars could be all the way back to the tavern or further because you have people coming from the other direction slowing down and making right hand turns into the place at the same time, after you open a business where the turnover is. Typically, do the cars come in bunches, are there a lot of people there first thing in the morning? You said it will accept the traffic flow but he don't see any traffic flow. He don't see when the peak period is.

Jay Trout man – The cars arrive over several hours in the morning, beginning as early as a little before 9am - sometime in the late 8 o'clock hour, employees probably before that. There's no indication from their research on the DOT crash history. They wrote a letter to the State Police to see if they would respond to if there were any safety issues. No response from them. There isn't a history of safety issues along this stretch of highway. The volumes are extremely low for a state highway.

C. McBride – In the testimony that was given on the Route 29 piece of property we had some metered traffic data- is there any metered traffic data for this part of the road?

Jay Trout man – The DOT actually had some data for this road as well. It carries about 6,000 vehicles per day which is relatively low.

M. L. Haring – And that's in what period of time.

Jay Troutman – That's on a daily basis in the summer.

C. McBride – Do you have that data to present to us?

Jay Troutman – He can submit that report to us, yes.

C. McBride – If you go back to the parking lot, please go to the left.

T. Decker – The movement as he understands the buses will come in, cut across the existing driveway to Arties and proceed along the gravel up and around. The cars also access and the tubing company will also follow that gravel but it will peel off to the right and go up towards the easterly parking area. Is that correct?

Jay Troutman – Yes, that's what that plan depicts.

T. Decker – How much distance is there between the edge of the pavement from Route 12 to the turnoff for that gravel from Arties driveway? With coming off the highway - how many cars can you fit there before they have to make the turn?

Jay Troutman – That's probably about a car length.

T. Decker – So, at a peak time you have multiple cars coming in, say westbound, and you have one car that's coming up, they have to make the decision when they get in there almost immediately as to whether they're going up to the tubing company or to Arties, correct? How much time do they have to react once they pull off the highway to make their decision?

Jay Troutman – There's a directional sign ( he pointed it out on the plan).

T. Decker – Is that before or after the turn?

Jay Troutman – It's right at the decision point.

C. McBride – Would that sign be visible with that new shrubbery that would be there?

Jay Troutman – Yes – there's a line of sight to the sign.

T. Decker – Would it not be better, rather than having the bus and traffic for the tubing company branching off right at Route 12, would it be better to move that intersection of the gravel drive to the west so that vehicles are able to get off of the highway on to the driveway of Arties and then make their decision (not sure exactly distance) but say 100 feet into the sight.

Jay Troutman - It's not a decision for a bus, so he really prefers to see that exactly like that for the buses -it fits the turn perfectly. Those buses have no decision, they know exactly where they're going. For a passenger car it can be considered, he's sure that's a change they could consider, a tweak to the site plan.

T. Decker – Is there any design that could be done with the current entrance to Arties that would allow that turning movement of the bus to make the turn off of Route 12 heading east without having to go on to the proposed gravel drive?

Jay Troutman – The only design you can do is a design almost like an eyebrow. The bus has to come in and

follow that pattern.

T. Decker – If you re-align Arties driveway so that you could make the turn, basically moving the entrance down Route 12 to the west to provide that curve going in there, is that something that would help with the turn movement?

Jay Troutman – It might help, it's not something to be considered because they're going to use the existing driveway system. They're not going to be moving any driveways.

T. Decker – His point is that if you were to use the existing driveway, just solely the existing driveway to bring a bus in - from the diagram it looks as though the bus would have to start making it's turn movement from the right lane of those two lanes heading east and cut across the left lane.

Jay Troutman – The bus can't make a turn from the right, it has to do it from the left.

T. Decker – But from a turning radius standpoint, based on that diagram, it can't make that turn from the left.

Jay Troutman - That's why it's designed that way.

T. Decker – He understands that. What he's saying is that if you took that design to the gravel driveway and how that moves in and it comes down and it's perpendicular to Route 12, if you did that on the existing driveway where you have room and brought that down perpendicular and created that same type of situation wouldn't that solve your problem as far as bringing the bus in.

Jay Troutman – If they built a new driveway on Route 12- he would have to look at that.

T. Decker – It wouldn't necessarily be a new driveway, it would be re-aligning the entrance of the driveway so it was more perpendicular from Route 12 to provide that turn movement.

Jay Troutman – That was originally designed as an ingress only just by the way it's angled and the width of it for the primary use on the property, so this temporary use is adapting that.

T. Decker – He understands that the primary use involved passenger vehicles for the most part, not buses.

Jay Troutman – In his opinion you need some aspect of the design that's shown there, if for nothing else, just for the bus.

Charles McBride – So, let me ask a follow up question – since that road now is a dual use, it's ingress and exit, where do you anticipate the cars that are exiting out of there be stopped and wouldn't the bus be running right up over them if they would stop and make that.....

Jay Troutman – Those areas that are on that plan I don't know why they're there because those don't exist. No traffic should be coming out of there – it doesn't accommodate two way traffic, it's a one way entrance.

C. McBride – And how would that be enforced?

Jay Troutman – With mark-age and signage.

T. Decker – He respectfully disagrees. He thinks if the driveway entrance is shifted down you could design it so you could get a bus to go through there. The only problem is you're doing disturbance within the DOT right-of-way, a DOT permit would be required.

Jay Troutman – And that design essentially does what your asking Mr. Decker, it makes it more perpendicular just by adding on to the existing pavement, so now you do have a straight shot before you have your turn.

T. Decker – He would agree if it didn't have that interface with the paved driveway for Arties, if that was just solely a bus turning movement in there, but your maintaining two parallel drives and there's a lot of movement that's gonna happen at that intersection with cars pulling in and making a decision and a bus coming in, that's why he had suggested if you move that up it at least allows area for the vehicles to get off of Route 12 and make their decision whether to go into Arties or to the tubing...

Jay Troutman – Actually the driveways don't accommodate entering traffic the same time because the DRT when it's open 4 months a year, when it's busy 15 to 20 days a year, loads its parking before Arties is open so there's not any patrons of Arties coming when the parking is getting filled for the most part. Buses are very sporadic, so to have a bus trip yielding to an on coming entering Arties customer every once in awhile in the afternoon when Arties is open doesn't present any conflict because the driveways don't get used at the same time.

T. Decker – And what are Arties times of operation?

Jay Troutman – Arties opens at 2 pm on weekdays and 12 noon on weekends.

T. Decker – It's a bar and restaurant, correct?

Jay Troutman – It's a bar and grill, yes.

C. McBride – Is the bar and grill set up to do catering?

Jay Troutman – Don't know.

C. McBride – So there's a possibility that there could be an event in there on a Saturday morning or Sunday morning.

Jay Troutman - I guess, he don't know. He didn't hear any testimony about that.

C. McBride – Again, when he looks at this he feels they haven't left any margin for error there and he doesn't think this is an acceptable configuration.

Jay Troutman – They can certainly make more room to the east for that movement.

C. McBride – He agrees with Mr. Decker and don't think any tweaking that they do on here, with the way the highway is set, would be able to be accomplished without changing the configuration of the driveway on the right-of-way to Route 12. He don't see how it's possible. You're telling me that every bus is gonna make this turn precisely within that – at the maximum at the radius there. I can't accept that.

Jay Troutman – He can guarantee that the buses can use that driveway because it's been accomplished numerous times all last summer and this design was only going to make that better.

T. Decker – By accessing the driveway you mean the proposed gravel – not the existing Arties.

Jay Troutman – Yes.

T. Decker – Would it be a safer configuration if the cars branched off of the access drive further into the site

at the intersection?

Jay Troutman – He said that they could look at, if they wanted the customer vehicles to come into the site further, but still having the bus on that path.

T. Decker – But still maintaining the bus where you have it shown.

C. McBride – The loading zone that's there after the Arties customers come in – explain to me what that loading zone is.

Jay Troutman -That's an existing loading zone for Arties.

C. McBride – So wouldn't you have traffic coming back out to use that loading zone to load people back into their cars to exit.

Jay Troutman – That's a loading zone for the Arties not for....

C. McBride – He understands that – we have to look at this holistically. So, if there's a loading zone there, that's loading and un-loading right, loading people...

Jay Troutman – No, it's for deliveries to the Arties.

M.L. M.L. Haring – A beer truck, that kind of loading zone.

C. McBride – He would like to see details on that including pictures.

M.L. Haring – Of what?

C. McBride – Of the loading zone.

M.L. Haring – Why?

C. McBride – Because he not sure that it's for where the people go into the establishment or not.

Jay Troutman – The entrance to Arties is on the west side.

C. McBride – So, if Arties has a truck coming in, like a beer truck which will probably have more difficulty making these turns and they turn in the other driveway - won't they be pointing out and want to come out that driveway in that point in time?

Jay Troutman – No, Arties deliveries come in, make a right turn in and they circulate in a counter clockwise direction.

C. McBride – So after the delivery truck comes from the Flemington area – you gotta give me more data than that, you can't tell me that every delivery truck is gonna come from there and none of them are going to be coming from Frenchtown.

Jay Troutman - All the large deliveries that need that road to circulate can be directed to approach from the east.

C. McBride – He's not satisfied with that at all.

C. McBride – He would like to go down to the area where the buses coming back into the parking lot. Up in the left hand corner where it says “No Parking”, where you have the buses coming back into the parking area. What is the distance between the island that's zebra striped out at the bottom to the line where it's no parking and can you put in some of the turning radius for the buses and how they're going to manipulate out and make that S turn out. Looks like that's a tight squeeze there too.

Jay Troutman – We would get a bus out once it's made that left turn, now it's basically going pretty much straight.

C. McBride – It's going pretty much straight-what's the distance there? It looks like it's about maybe 22 feet?

Jay Troutman – So, from the back of the parking lot you have about 50 feet until you get to those parking spots.

C. McBride – He's still making the turn coming out of the other side, right?

Jay Troutman – We'll give you a template on that, it works.

Jay Troutman – It's a site plan issue and they can revise the site plan to accommodate that.

T. Decker – He has a few other questions. On his May 11, 2015 report, page 11 (q). In 2013 the applicant received approval on Route 29 for the storage of tubes, etc. and drop off and he believes he was part of that hearing process. He believes that the testimony at the time was that by storing tubes, etc. over on Route 29 it would reduce the number of bus trips by about a half. Is that still correct? If the tube storage is still on Route 29 would that still apply to this site?

Jay Troutman – Yes.

T. Decker – May 11, 2015 report, page 12, at the top. You referenced last years numbers for DRT at the Route 12 location – for 10 years prior they were over on Route 29, at Frenchtown Roller Rink. During the 2013 hearing there was discussion about the number of vehicles etc. and several residents came out. Did you look at any of the data from when the tubing company was on Route 29 and established?

Jay Troutman – He believes that on the highest day here, which is what they used for DOT, the highest customer day. That might of happened more oftener with the roller rink but they still had the highest day. So, they had average occupancy, four per car accommodating 11- 1200 customers in a day and parking.

T. Decker – Do you know how many parking spaces were over at the Frenchtown site?

Jay Troutman – No, he don't.

T. Decker - Do you know if there was overflow parking over there as well.

Jay Troutman – Yes, there was.

T. Decker – During his study the tavern wasn't open at that time, correct?

Jay Troutman – That's why he mentioned in his direct testimony that they took that and super-imposed it with the pattern of the tavern to make sure they were compatible.

T. Decker – Did you measure the number of vehicles or was that data that was provided to you.

Jay Troutman – That was NJDOT count.

T. Decker – No, the number parking vehicles etc on the site.

Jay Troutman – I'm sorry, that was provided to him.

T. Decker – During the 2013 hearing- do you recall there being testimony that there could be at the peak, experienced on a Saturday, approximately 2,000 people while they were at Frenchtown?

Jay Troutman - He don't remember that.

P. Stepanovsky – Route 12, at that point where it is with three lanes, are there any shoulders?

Jay Troutman – No.

P. Stepanovsky - So, in other words , if cars were coming from Flemington down and they can't get into the parking lot it would back up the traffic on Route 12.

Jay Troutman - No, there's not a backup on Route 12 from this site with this design.

C. McBride – What do the think the speed of that bus making that turn would be?

Jay Troutman – Fifteen, something like that.

C. McBride – So, they're gonna make that turn at 15 miles an hour. That template is at a 15 miles an hour speed.

Jay Troutman – It's probably a little bit higher.

C. McBride – But they're most likely gonna stop first, so it's gonna take them awhile to get up to 15 miles an hour. He thinks what the concern is, is that the car that now comes up to turn in is gonna be with their grill at the back bumper of a bus until that bus gets turned in here and around and then the next person behind them is gonna be there and backing up the traffic on Route 12.

Jay Troutman – Is that possible that that could happen, yes. Is it a likely scenario, no. There's plenty of gaps and head-ways to absorb all of the movements, as well as keep the movements on Route 12 moving.

Jim Laudensch asked a question regarding the number of cars coming in.

Jay Troutman stated he can get him that answer.

5 minute break.

M.L. Haring – Mr. Troutman, a couple of questions, on the entrance-way where it says new wood gate. What is the width of the driveway at that point.

Jay Troutman – It's 12 feet according to Mr. Hardcastle.

M.L. Haring – And the entrance where the bus is turning in. What is that 15 feet?

Jay Troutman – That's about 25 feet.

M.L. Haring – Why couldn't that entire drive be 25 feet, so that if there was an issue with a bus turning from the east bound and a car coming from the west – it would be wide enough for a bus and a car if there was a situation. Why does it have to go from 25 feet to 12 feet.

Jay Troutman – Eventually they want to get down to 12' because they don't want people trying to pass.

M.L. Haring – Why can't you do it after the turn off to the right for the cars, and the buses go straight for loading. Why can't that entire area from the highway to where the gravel apron goes to the right for the cars and the buses go straight ahead. That would make good sense. That gets your buses in and it gets any traffic coming from the east both in there if there was an incident. I think that's one of the concerns of the Board.

Jay Troutman – He did calculate that you can store about 30 cars before that would even be an issue all the way around from the parking attendant all the way back. He don't see any issues that would cause a stack back there.

Mr. Hoffman – So, on the break you took the opportunity to scale it out and queued the number of cars all the way up to the parking attendant to the top and you came up with the number 30 plus or minus.

Jay Troutman – You can get about 9 or 10 cars per side and you have three sides all the way around the parking lot.

C. McBride – We're not concerned about a delay at the parking attendant. We're concerned about a delay when the bus pulls in and there's two or three cars that are stacked right behind it.

M.L. Haring – And plus, we've all lived in this area and if it's during the week around 4:15 there's like 25 cars coming into Frenchtown from Flemington, and if it's a nice sunny 90 degree day on Wednesday that's where you're gonna have an issue.

Jay Troutman – That's late in the afternoon so that's after all their cars on in.

C. McBride – But your buses will be turning in.

Jay Troutman – You can have a bus turning in there every half hour -fifteen minutes..

M.L. Haring - She still wants to get back to her suggestion. She don't know that there's any driveway permitted at 12'.

Jay Troutman – Twelve feet is a standard one way travel lane. We will look at that as a site plan issue.

M.L. Haring – If there's nothing else from Mr. Troutman you can call your next witness.

Mr. Hughes and Mr. Friendschuh were both sworn in by David Pierce. They stated that they worked last year the entire season for DRT and witnessed queuing coming into the parking lot and didn't see any back up on Route 12. It was always flowing.

M.L. Haring – What hours did you work?

Mr. Hughes and Mr. Friendschuh stated that they worked from 9am to 8pm.

C. McBride – Where were you typically positioned during your shift?

Answer: Had a chair right at the turn about 15' off where the buses turned in, directed them to the next parking attendant.

C. McBride – So, you were charging a parking fee?

Answer: Yes.

M.L. Haring – Any other questions?

Mr. Hoffman is calling Eric Rupnarain, engineer, to speak about Revised Sheet 3.

David Pierce reminded Mr. Rupnarain that he was sworn in last month and is still under oath.

**Eric Rupnarain -EXHIBIT A-53 Revised Sheet 3**

Eric Rupnarain – At the last meeting there was a couple of issues that came up regarding the screening of adjoining property owners which are located off-site. They are installing a double row of evergreens to the west which will fill in the gaps between the existing trees and provide sufficient screening as the trees grow and blocked this area into the overflow parking area. They've added some landscape, shrubbery, deciduous trees and ornamental flowering trees, around the existing paved parking area that Arties currently use which will add vegetation to the parking lot and will provide an additional separation between the new driveway that they are proposing from Route 12 to serve DRT and Arties. Another change to the site plan is to re-stripe the parking spaces at Arties and in addition they are proposing three handicap parking spaces as required by ADA. Those are the primary changes that are being proposed to existing paved parking lot.

They are changing the parking spaces from 9x18 to 10x18 and they are proposing to define the main and overflow parking with split rail fencing which is relative to the rural nature of Kingwood Township. The fencing is proposed around the entire perimeter of the property. They are also proposing split rail fencing along both sides of the exit drive.

They are also proposing to construct seven handicap parking spaces (required with this application). The current location of the office building will be re-located.

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

T. Decker – The split rail fence, will that be permanent?

Eric Rupnarain – Yes.

T. Decker – So, that will stay throughout the year and will not be taken down at the end of the season and re-established at the beginning of the next.

Eric Rupnarain – Correct.

C. McBride – On the diagram, opposite the loading zone, there's an area that looks like it's connecting the driveway and the parking lot. Is that another one of those stabilized exits?

Eric Rupnarain – That's an existing gravel area that he presumes was utilized last year and will be removed as part of this application.

M.L. Haring – Any questions?

T. Decker – The driveway is still proposed to remain as grass and restored with no stabilization at all.

Eric Rupnarain – Correct.

C. McBride – The office building now, is it a permanent structure?

Eric Rupnarain – Yes, it will be a permanent structure.

C. McBride – And it meets all of the requirements for a certificate of occupancy for employees?

Eric Rupnarain – Mr. Crance has met with the building official and he can offer further testimony.

P. Stepanovsky – The driveway coming off of Route 12 and going up to where you drive up and the buses go one way and the cars the other way – shouldn't that be made wider so that you can accommodate a bus and a car together?

Eric Rupnarain – They don't feel it's absolutely necessary and appropriate for this type of facility and are trying to keep this as rural as possible.

M.L.Haring – But you'll notice that the drive all the way around the property is never less than 20 feet and the most important part of that driveway from the highway in is only 12 feet, and the rest of the inside of the footprint of the property is 20 feet all the way around. The Boards concern is from the highway in, so the 20 feet is a minimum.

Eric Rupnarain – The only thing they're proposing is a 20 foot aisle.

P. Stepanovsky – You ever go down a gravel driveway?

Eric Rupnarain – Yes, he has.

P. Stepanovsky – Where's the ruts – in the same place.

Eric Rupnarain – You're correct.

T. Decker – A properly designed gravel driveway, you're saying that you're not putting any gravel down though. He still has an engineering problem with not stabilizing the main loop road, and he understands the ordinance requires parking lots to be paved and he's not suggesting that the whole parking lot back there be paved or the access drive be paved. But he does think that it's reasonable for the Board to expect some kind of stabilization in the heavily traveled areas. He was out there two weeks ago and he took some photos and the drive is very defined – the ruts are there. It looks like a field road and what he's saying is you already have the fencing there that's going to stay there permanently. The route primarily stands on the outside of the fence- why not have a permanent gravel drive going around there because you've already reduced the amount of farm-able land in that area. That's his concern. The Board doesn't have control over operations after approval.

D. Hewitt – What was your take on the silt fence?

T. Decker – The silt fence – he wasn't a fan of the silt fence that was originally proposed. There were a couple issues with it – the orientation wasn't proper but he also had some concerns as far as it being a tripping hazard, it's only about 18 inches high and people are going step over it, trip over it etc.

D. Hewitt- He was thinking of the outer perimeter of that road to keep the runoff.

T. Decker – Again, if it's a stabilized gravel.

D. Hewitt – Right.

C. Bride – In your ( T. Decker) report that you produced on page 11 of 15, item “t” – it says ***“While DRT may operate seasonally, if approved it will be a permanent use.”*** With the proposal now to have the permanent fences here shouldn't we eliminate the season at all and the seasonal traffic that's in here and assume that this could be run as a year round basis clearly taking away any agricultural use for this.

T. Decker – That would be for the Board, from an engineering standpoint he's not sure.

C. McBride – Mr. Pierce, doesn't the event of them collecting a parking fee it's own business or sub business. Aren't the parking fees and parking subject to other rules in the State of New Jersey for parking restrictions.

D. Pierce – First of all he doesn't believe it would qualify as a separate business, if an approval is granted by this Board, the application is for the operation of a parking lot in conjunction with the tubing operation. Any approval, if approval is granted, would strictly limit their operation of this facility from June through September, Labor Day whatever dates they have. They don't have permission or authority from this Board in conjunction with a use variance to operate that parking facility at any other time. It would not be a separate use, they've not applied for that as a separate stand alone use. In terms of parking and charging a fee, he's not aware of any state regulations relating to that, there may well be some but it's not an issue that he's ever had.

C. McBride – Do they have a way to prevent, just like you have a gate on the ingress to the parking area, do they have plans for a gate at the egress to the parking area, after everything is done and the season is done.

Eric Rupnarain – One is not proposed but if it's the Boards request that they do install a gate at the exit area then they can certainly do so.

M.L. Haring – Were there any traffic incidents last year on the highway?

Mr. Crance – There were no bus incidents at all. In the beginning of the season there was no incidents turning into the property from any customers. There was one incident where a car was going into the slow lane, the right lane, going towards Flemington and he went into the left hand lane and in a blind spot did not see a car and there was an accident there. It was not related to turning in but was related to changing lanes from the right to the left. There was no accidents related to turning in or out of the property at all.

Mr. Hoffman – One comment to the question regarding improving the circular path around the site with impervious surface where there's stabilization. Again, they want to keep it in it's natural condition and to the extent the compliance is a concern, in terms of rutting and seeding and all that kind of fact issue, they would certainly consent to a condition to the approval that requires an escrow that allows someone from the township engineering professionals office to inspect the site every season as often as the Board sees fit to make sure they're complying. It's a far more cost effective way for them to address the issue. If you put gravel there, gravel moves and gravel isn't the existing condition and that is what they are trying to maintain.

T. Decker – Long term type solution for something that could be accomplished with stabilizing the drive, and if it were stabilized he would suggest that they could actually reduce that 20 foot wide path going around and since now you're not going to be alternating lanes you may be able to bring that down to 15 or 12 feet, and then you have more of the farm lane look which is consistent with the rural atmosphere of a stone lane going down between split rail fences, that's not uncommon in the township.

Mr. Hoffman – From his experience the stone moves and gets pushed around.

T. Decker – Full compliance would require paving, correct?

Mr. Hoffman – Correct.

T. Decker – I'm not asking for full compliance. I'm asking for.....

Mr. Hoffman – He's talking about full compliance that they will till, re-seed, take care of any erosion issues caused by tires every year.

T. Decker – He would have to defer to the Board if that's something they want their Board engineer to do.

David Pierce – He doesn't think it's appropriate to characterize it as being no testimony that there wouldn't be a deterioration of the gravel drive. Any surface is going to deteriorate over time and it's the property owners and operators responsibility to maintain that, and what Mr. Decker has provided, in the record, is his opinion that stabilization of this travel-way is appropriate and should be required by the Board. The applicant obviously disagrees with that opinion, but the Board is going to have to weigh those two positions and make it's own determination. The mere fact that gravel can move is not, in his opinion, an appropriate reason to discount Mr. Deckers opinion on this issue. As he indicated, the ordinance requires paving and the applicant is requesting a variance from that and the Board has the ability and authority to impose conditions related to any variance that is granted, even if that condition is a travel-way with gravel as Mr. Decker is suggesting. He would add that enforcement is a very vaporous issue. How are you going to enforce it, the Board has no enforcing authority. Once the variance is granted, it's granted to satisfy the condition. If they don't satisfy the condition in subsequent years it's going to have to be the zoning officer that writes up a violation and if it's not still resolved it will go to the township municipal court and then it's going to be back here to this Board. The concept that the escrow is a permanent solution – he don't think it's a fair characterization.

Mr. Hoffman – His comment is that the enforcement is there. From his perspective there's no sworn testimony to a reasonable degree of engineering probability that placing a stabilizing substance there will hold up over time. They will maintain the condition of the field as it exists.

D. Hewitt – He doesn't want to see that there's a permanent fence going in, really delineates the roadway and kind of lost the premise of being able to hay that area. You're not going to take that in and out every year, correct?

Mr. Hoffman – The fence is permanent and you can still hay the field you just have to navigate around the fence. The fence is wide enough to accomplish that.

D. Hewitt – The first premise the idea was that we wanted to leave it natural, rural, hay the whole thing, but now with the fence there he finds it will be a little difficult to do that. He has no problem with the fence it's probably a good safety issue with people driving in there but he kinda agrees with the engineer it should be stabilized and you kind of lose the.....

Mr. Hoffman – His understanding of putting the fencing there was to discourage the pedestrians from randomly entering into areas and crossing traffic with the buses, etc.

T. Decker – He will say he does like the addition of the split rail fence for that purpose. He also likes that the plan has been revised to consolidate all the tents and everything down to the southern portion rather than scattered throughout the rest of the site. He thinks that was an improvement.

Mr. Hoffman – They'll work on the site plan for the next meeting.

Elizabeth C. Mckenzie, Professional Planner, was sworn in by David Pierce. She gave her educational background, testified over 300 times in the state and was accepted as an expert witness, and is a licensed certified planner in the State of New Jersey. She was accepted as an expert witness.

#### **Exhibit A-54 – CD**

Elizabeth Mckenzie stated that she reviewed the application and was present at the first hearing. We're talking about a property identified on the Tax Map as Block 6, Lot 21 and is located on the north side of Route 12. It's partially developed with Arties and it's associated parking lot but most of the property is open farmland. It's in that farmland portion of the property where they are proposing to have the DRT operation. The property is about 8 acres of land having over 700' of frontage on Route 12. It's depth from the highway is approximately 480', there's a little bit because of the curvature of the highway but that's approximately the depth. The existing pub and restaurant is pushed forward on the lot and extends a little bit into the right of way of Route 12, so it's non-conforming. But in all other respects the property, in it's current development, is a pre-existing non-conforming development, it basically conforms to the co-ordinates for the HC – Highway Commercial Zone in which the property is located, with a much lower building coverage floor area ratio and impervious coverage than the ordinance would otherwise permit in the HC Zone. The Highway Commercial Zone extends a little to the west of the property.

The subject property is outlined in the yellow where you can see the driveways and parking areas for Arties - shown in the center of the site. To the north of the site you have a farmstead and some agricultural buildings and to the immediate west is a dwelling and office use. To the immediate east you have a couple of automotive uses and a dwelling located behind those uses along the northeast boundary of the property. On the south side of Route 12 you have some residential uses that are set quite far back – you have some nursery type uses, but she would say the predominant uses in this area are agricultural or automotive. These are pre-existing non-conforming uses.

As you drive down Route 12, and this goes to something in the ordinance, this property is not only in the Highway Commercial Zone but it's also in the Scenic Corridor Overlay Zone and it's understandable why as you drive along this part and past the automotive uses you get a lovely wide view and as you get going down towards Frenchtown, before you get to the wooded area, you have a lovely view of the agricultural land that really defines what Kingwood is. So, she happens to like this part of Kingwood and understands why the ordinance has the Scenic Corridor Overlay Zone added to it. The property in question is located within the HC Zone but because of the addition of the Scenic Corridor Overlay Zone some of the uses otherwise allowed in the HC Zone, are no longer allowed in this part of the zone and there were some other types of uses that were added to the HC Zone for this area that would allow broader uses and still accommodate the Scenic Corridor Overlay provisions.

The applicant, as you know, is proposing to utilize the open area surrounding the existing pub/restaurant for the parking and staging associated with the DRT business. It is a strictly seasonal business and potentially operates between Memorial Day weekend and October 1<sup>st</sup> but realistically it operates for about 10 weeks out of the year which means the 4<sup>th</sup> of July weekend and early to mid September, depending on when the weather changes in September. It's all weather dependent - if you get a rainy spell you will not be on the river and even the day after tubers will not be sent out because it's too dangerous if the water is high. Sometimes you have to wait several days for all that storm water to come down.

The applicant is proposing as minimal as possible changes to the site and this is a business that can operate with very little changes to the site and nothing that is necessarily permanent. It is capable of operating that way because it used to be located at the Frenchtown Roller Rink which is in a residential zone and operated there for about 10 years. If you go back to the Roller Rink there is no evidence that the business operated there for that period of time. One of her concerns in asking the Board to consider approving this use on this site, which

it is a very colorful use, it involves cars parking on the site in lots of places and lots of things about it that you might say you don't want that anymore along the Route 12 corridor or this part of the Route 12 corridor but it is a use that can completely disappear at the end of the season and if it ever vacates the site it completely leaves the site. There are some improvements that the Boards professionals are asking for and they are consenting to provide in this particular case. And she understands that push pull between wanting this site to basically just remain farmland all around the existing Arties and not be changed. The concern that the Board professionals have and she thinks they're valid concerns that while it's operating and as it operates from year to year you don't want gradual encroachments closer to other property lines, you don't want abuse of the original approval, you don't want enforcement issues, you want some definition to what is allowed and where it can go. She thinks that part of what they are asking the Board to weigh is the issue of how far you want to go with those improvements and how far you want to go with making sure that if this use ever leaves the site there's not enough in the way of improvements there to justify somebody else coming in and saying "Well this was used as a parking lot so I'm gonna park all my used cars on this property and that's gonna be okay". You don't want anything left that would entitle somebody to anything other than this seasonal business use, if it should ever leave. You don't want something that would become a year around use. This sets the stage for the problems that the Board is wrestling with.

Most of the fields will be used for parking and there has been a consolidation in some of the areas where there will be storage of tubes and kayaks and the office and some of the other equipment storage, so it is in a more limited area on the site and makes it a little more accessible for personal handicap spaces that they have to provide and also, to make it efficient in terms of loading people on the buses because they now have a defined bus route that will come around the perimeter of Arties parking lot. That little area directly behind the Arties parking lot is where you will see the residual associated with this use and that is because of the office/shed that will remain on the site and the area where the buses will move in and out.

The other thing is that now the addition of the split rail fence it's going to be an improvement. It will impair, to some extent, the ability to hay the whole area when it's hay season, when this use is not operating. On the other hand, you will still be maintaining the agricultural look of the property with the split rail fence. More importantly if this use ever vacates the split rail fence can come out if you want to go back to haying the property completely.

There will be porta potties on the site so there's no impact on septic systems, and the applicant has indicated that already. The parking spaces in Arties parking lot will not be used by DRT patrons. Only the existing driveway entrance and exit will accommodate both buses and automobiles that are entering the site. She thinks they have done a better job of this revised site plan of separating the activities associated with the two uses. Arties is a use that normally doesn't open up until 2 in the afternoon on weekdays and may open up a little earlier on Saturday afternoon and Sundays. It does go into the night, this use is not a night time use. The last tubing buses comes in around 7pm to bring people back and the site is pretty much closed down by 8 o'clock before it's dark. There's no need for lighting because of this in connection with the parking areas, so basically it can operate with very little in the way of improvements as it has in the past.

She wants to talk about the purpose of the HC Zone and Scenic Corridor Overlay Zone. The purpose of the HC Zone is to provide for the development of highway-oriented commercial uses outside the village areas and along Route 12 which have a market generally wider than the immediate Kingwood community. It draws people regionally to the recreational facility that's represented by the Delaware River Tubing and provides a way of managing and controlling the traffic that comes in and providing safe access to the river and providing people with safe equipment and oversight because he has boats on the river to make sure that people are operating safely and that nobody is in trouble. The use provides a great way to manage something that people might do anyway and they might do on their own, but it prevents them from parking all over Route 29 and gaining haphazard access to the river. It is organized and he has worked extensively with the Army Corps of Engineers and the DEP to get all the approvals he's required to have and he's still in the process of getting

some in conjunction with the other site that he has on Route 29 and still has to work out the access issue with DEP. Basically he has been diligent in getting the approvals he needs to be able to operate properly. The uses that are allowed in the HC Zone include a wide range of uses including automobile dealerships and things of that nature although not anymore in this part of it because of the Scenic Corridor Overlay Zone.

The parking and staging area that's associated with this seasonal tubing business is not listed as a permitted use in this zone and consequently they need a **D1** use variance that requires a heavy burden of proof on the part of the applicant and it's her job to try to satisfy that for the Board.

The Scenic Corridor Overlay Zone has as its purpose to revise the zoning to be more in conformance with the development opportunities that realistically exist in the subject area, to preserve the rural character and rare scenic beauty in and along the subject zone and to promote the design compatibility for the development, redevelopment, and changes of land use along the Route 12 corridor in Kingwood Township by employing design standards intended to preserve existing views, especially the open vistas in the section of the corridor west of Baptistown, which is what she's talking about here and to avoid the perpetuation of strip highway commercial sprawl development along the corridor. The planning objective of this section is to replace a zone plan that currently allows linear highway commercial development as close to the highway as possible and allows the zone to provide realistic opportunities for development while preserving the corridor's existing scenic beauty and rural character. In evaluating whether this use belongs here that issue was paramount in her mind in terms of whether or not they could accomplish that goal and satisfy the Board that that overall goal is being met. This site is prime agricultural land, so it's not land that you never want to have paved over if you could avoid it, and if you can maintain agricultural use on this and have this available for at least agricultural even if from time to time it's not farmed. The issue of continuing farming is not too much for the benefit of the property owner, it's the availability of the land for farming in the future. To promote the objective of the Scenic Corridor Overlay Zone there was a change in the uses, as she indicated, to delete a lot of the commercial uses that were previously allowed in this part of the HC Zone and adding things like single family dwellings, parks and playgrounds, churches and cemeteries, golf courses and government buildings. There's also a new requirement for an enhanced building and parking set back in this particular area and is equal to half of the average lot depth, up to a maximum of 300 feet. The average lot depth here is about 480 feet, so the requirement would be for 240 feet if this were a vacant site. You also have a provision that says existing buildings that are located closer to Route 12, this is what they have here, are permitted to continue without relief for a variance provided that any future building or parking area on that lot must be no closer than 100 feet from Route 12. The original site plan submitted showed seasonal parking within the 100 foot set back and then a revised plan was prepared that eliminated that condition and satisfied the Scenic Corridor Overlay set back for previously developed lots. The most recently revised plan which is a little different proposes a 101 foot parking setback, but it identifies the presence of a proposed live aisle that's 81 feet from Route 12 and that's where the cars will go to drive around the site and come back around to get into the parking lot and that's within the setback. One of the reasons they are proposing to have it remain as grass, but never the less that is an area that is within the 100 foot setback that would be required for a previously developed lot in the Scenic Corridor Overlay Zone.

This plan also identifies the need for variances from the requirements for setbacks for undeveloped lots in the Scenic Corridor Overlay Zone. It says, and they don't meet the 40 foot requirement and they don't think they can develop this use and meet that requirement. The 300 sq. ft. modular office will be 226/227 feet back from Route 12. The nearest point of the grass parking area will be 101 feet from Route 12, and the unpaved drive aisle will be 81 feet from Route 12. We need variances – we need it anyway for the 81 foot setback to the drive aisle. We may, if you interpret your ordinance to say even though this is on an existing lot we think it's a new use, we'd like you to adhere to the 240 feet, then they would need variances for the building and parking set back as well as the drive aisle. They're seeking whatever variances that this Board determines they need. There are other bulk requirements applicable throughout the HC Zone which talks about a minimum lot area – 4 acres which they have, minimum lot frontage of 275 feet which they have, minimum lot depth of 450 feet

which they have and it's obvious that they don't need the front yard setback for Arties. The building coverage and floor area ratio for this zone are each limited to 10% of the site area and the maximum permitted in impervious surface cover is 45%. The only one that's not met of these requirements is the Arties setback. They need a C variance for that existing condition.

There's also a Section 132 - 54 (A) in the ordinance requirement for a 50 foot buffer be provided along any lot line or street line separating a non-residential use in the HC Zone from a lot in a residential zone or containing a residential use. The buffer is not proposed to be provided where it's required. The northeast corner of the lot, in that area they have a residential use, you can see that they are not providing the full 50 feet in that location although there is an existing heavy tree line in that area. Also, if you go along the whole northern boundary of the property they are not going meet the whole 50 foot requirement there because they have the drive aisle in that area. It's going to be 62.9 feet to the fence line but the area where the drive aisle is they will be within that 50 foot area. That also is a heavily vegetated area. The only area that is not well vegetated is along the northwest corner of the property and the applicant is proposing a double row of evergreen trees in that location. Along the western property line they have the 50 foot buffer and that is adjacent to a residential lot that has a business use located there. Lot 20 immediately to the west of the subject property. The building, on the screen, that you're looking at now is an office use and there's a house further away on the property.

C. McBride – That's not the adjacent lot, the adjacent lot is 18.01.

E. McKenzie – This is Block 6, Lot 20. You're absolutely right, their driveway, the lot in between directly behind them. It's a driveway that leads to a residential and farm use property.

E. McKenzie- So, they have the 50 foot buffer variance as well. There are a bunch of other variances and/or design deviations that this application involves. There are certain characteristics of this use that is proposed as a D1 use variance that are intended to the use itself. The fact that it's an outdoor use, the fact that it's seasonal only, the fact that it can occupy the site without the need for a lot of permanent structures or fixtures. These characteristics of the use are part of what define the use. They're not characteristics that you will traditionally find in connection with any other commercial use. The regulations that pertain to the development in the HC Zone put a lot of conditions that they are not going to need. The fact that you can have a use variance that involves a number of these deviations that are part and parcel of what the use is, is something that the Supreme Court had said in a very recent case in 2013. The Supreme Court basically said that there is little doubt about the fact that a use variance, by its nature, carries within the implication that the ordinary bulk and density requirements of the zone will not be applied. This does not mean that the zoning board should ignore the ordinary applicable limits when evaluating applications for a use variance, it does mean that the Board can, as part of granting a use variance, consider the other requested variances as ancillary to the primary use being sought. The fact that this is a use that is an outdoor use and is seasonal that doesn't require a lot of improvements is something that is limited to the Board and how the Board might regard those other deviations that they are seeking. If you're more comfortable having testimony on each of the deviations she will try to provide that. The sections that she thinks are particularly relevant in the ordinance re: Section 132-34 (J) 3&4 -HC Highway Commercial District which pertains to the conduct of business within the building and 50 foot wide landscape screen for parking area and street line and Section 132-53 (A,B,C & H) and those pertain to the landscaping, lighting, surfacing and curbing and parking space size. They're showing 9'x18' and our ordinance requires 10'x20'.

T. Decker – The engineer testified that the spaces would be still be maintained at 10' wide and 18' deep, so they were satisfying the width of the space.

E. McKenzie – Sorry, you are right. She knew that they were doing that at Arties because they're re-stripping all of Arties to comply.

E. Mckenzie - They are not striping them (parking spaces) so they have the flexibility if somebody comes in with a big Hum Vee or something to accommodate that and also smaller cars as well. They will be parked reasonably by the direction of the parking attendant who manage that very well and make you park where they tell you to park.

The applicant is proposing a sign boat on a trailer for the front of the site. The sign boat and the place it's proposed is in the rectangular area between the Arties paved driveway and the proposed new driveway. The sign boat measures 74' wide x 16' long and is mounted on a trailer – it's a portable sign which we don't allow and it's a lot bigger than you will normally allow. It will comply with the minimum 30' setback from the right of way, it will be at 35' and will be less than 10' high. The picture on the revised plan shows the sign and it says **RIVER TUBE RIDES**, the telephone number and [WWW.DELAWARERIVERTUBING.COM](http://WWW.DELAWARERIVERTUBING.COM). The way our ordinance counts items of information is each syllable and number counts as a separate item of information, so she counts 21 and there's a maximum of 10 in our ordinance. Those are the C variances that they need in connection with this application.

The primary variance that they need is for a D-1 use variance. Granting any D variance necessitates that the applicant demonstrate to the Board that there are special reasons that justify granting the variance in this particular case. They also have to satisfy that if we are to grant the variance there will be no substantial detriment to the public good and no substantial impairment to intent and purpose of the zone plan and zoning ordinance. There was a Supreme Court decision in 1987 and that indicated that when the Board is granting a D variance for a commercial use or a use that's not allowed in the zone there's an enhanced burden of proof on the applicant and the Board must ordinarily reconcile the granting of a use variance with the presumption that it isn't listed in the zone they didn't want it in the zone and that's particularly the fact why municipalities are required periodically to review their Master Plan and Development Regulations and Re-examination Report so towns have an ample opportunity to take another look at their ordinances and see what's missing and see what they should be doing to update them. There's an intense quality of proof that they have to provide to us in terms of the impact of the intent and purpose of the zone plan and zoning ordinance. In terms of the C variances there are two different kinds of C variances. One (C1) is hardship or practical difficulty argument and the only one that applies to that is the existing Arties setback. All the other variances are C 2 variances which is essentially weighing the benefits vs the detriments. That is almost like a special reasons argument – the positive and negative impact. They have to satisfy all the C variances and whether granting those variances there would be any substantial detriment to the public good and any impairment of the intent and purpose of the zone plan and zoning ordinance.

As to the D variance she told what the facts and criteria are on which we will be evaluating the variances and she now wants to talk about why she thinks these variances should be granted. She thinks this use is right for this site, subject to some of the caveats that the Board has identified, and there has been a lot of dialogue and eventually this site plan will be the way we want it. This is a use that first of all serves a market that's generally wider than the immediate Kingwood community. It's therefore one of the types of uses that belongs in a highway commercial zone. You don't have a highway commercial zone down on Route 29 and when this use was located on Route 29, it was located in a rural rink, which is in a agricultural residential zone. It was not a site in where it was actually allowed to be located. The HC Zone is a more appropriate type of location for this use and if you look at where their located relevant to the river, the HC Zone starts on this small property that is located on the far west corner of the board, it includes the farm property that is located just east of that, it includes the property that has the house and the office and goes back to the residential and farm property that's located to the rear. You have existing farm and residential properties. This is the first intent to use commercial property because the office is not that intense; that is large enough to be able to accommodate this use and you already have a formal ingress and egress to the site. There are some definite reasons why this is a really good site for this use. The fact that this is a use that doesn't require permanent improvements to the site and will basically be accommodating not only seasonal activity but basically fair weather activity for the most part. This is the kind of use that when it's over with the season and when it leaves permanently it can leave the land the way it was. The Frenchtown Roller Rink is an example of that. During most of the months of the year

when this use is not operating our Scenic Corridor in this area is totally protected. She's not offended by the split rail fence because of terms of the look of it and the Scenic Corridor she feels the fencing is a good way to handle that. It works in a way of where you can or can't park. It does impair how easily you can farm the whole property. This proposed use is unique in Hunterdon County and also in Kingwood Township. It does provide, she feels there's a substantial public benefit, organized access to the recreational opportunities afforded by the Delaware River, and there are a lot people that like to go tubing or kayaking or making use of the services provided by DRT in the summer months.

This is a part of the State of New Jersey where tourism and recreation, as well as the retention and protection of farmland and environmentally sensitive land is valued by the 2001 State Development and Re-Development Plan. It's also a use, this particular use has been part of Kingwood for a very long time, whether it's ever had the proper approvals to be part of Kingwood, it's been operating in Kingwood and it's been part of what Kingwood has to offer for a very long time. It was located on the subject site last year before the determination by the zoning officer that he wasn't permitted to be located here. It's a drawback that he didn't get all the approvals he needed from BOA to be located where's he's located. But the one thing he did give the Board is the opportunity to evaluate just the kinds of things your evaluating now – how the use would actually operate if located on this site. She's not saying it's a good thing to have a use go out and operate without getting the proper approvals, but she is saying that the hidden benefit in that is that you do have some empirical evidence of what actually happens, what you like and don't like about it, what you would change and what you don't want to change. We also have the benefit of the history of how it operated at the Frenchtown Roller Rink and that site did not offer the dual ingress and egress and had a much more sloping grade and didn't have any of the advantages.

The characteristics of this use and why it needs to be located on a site such as this, this site is uniquely suited for it. It provides very good access for the public that will be coming to the area to play on the Delaware River. It has excellent access from Route 12 via the existing circular driveway system which offered the opportunity for a one way ingress and egress. The design of the driveway, all of that can be tweaked as part of the site plan but it does afford the opportunity for that kind of circulation pattern to be established on the site. That is a good thing because that was a drawback at the Roller Rink site. The use requires that this site has the sufficient size and shape to allow for the efficient movement of the buses and the efficient movement and parking of their customer vehicles. This site has that size and shape and it can accommodate this use without using every square inch of the property. You're still left a substantial setback to Route 12 and they still have substantial setbacks even though they don't comply with the full 50 foot requirement along the perimeter of the site and those perimeters are, with exception of the areas she pointed out, being planted. The use requires reasonable proximity to the Delaware River, obviously they can't be located in Raritan Township, because it's too far to bus people to the Delaware River. Kingwood does provide the opportunity to the access to the Delaware River. It's the closest reasonable commercially zoned property that could accommodate this use along Route 12. The use requires relatively flat land. The fact that they're adding a seasonal business along Route 12 could be beneficial to some of the other uses along Route 12. There's automotive related businesses, the buses are gonna need servicing from time to time, people may want to go get a bite to eat at one of the restaurants after being on the river. It will bring a certain amount of business to the area. You do have a HC Zone for a reason you do want the local businesses to thrive. In considering all of those facets of the use, the benefits associated with having this use, in Kingwood, and in this particular location, she would say granting this D variance for this case promotes a number of purposes of the Municipal Land Use Law and she identified five (5). **Purpose (a), to encourage municipal action to guide the appropriate use or development of all lands in the State, in a manner which will promote the public health, safety, morals, and general welfare,** She thinks this is a safer alternative then having people come, park along Route 29, and try to get into the river any way that they can, bringing their own equipment and not being monitored or controlled. **Purpose (d), to ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as whole.** This is the area that the State Plan would always contemplate it to be for agricultural uses and recreational uses. This accomplishes both of those goals.

**Purpose (g), to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens.** The site and the fact that it provides both a recreational opportunity but without keeping away from the agricultural opportunities for most of the year. **Purpose (m), to encourage coordination of the various 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.** They have an existing site that has a commercial use on it, has ingress and egress that can be taken advantage of and where they can locate this use without having to add a lot of additional improvements to facilitate that ingress and egress. Also the fact that it's located on Route 12 and it does not require the use of a lot local streets. **Purpose (p), to enable the municipalities the flexibility to offer alternatives to traditional development through the use of effort able and effective planning tools including and it includes things like cluster and transfer of development rights, lot size averaging, in order to concentrate on development to growth invest the economy and maximize while preserving agricultural land, open space and historic sites.** The key thing about this purpose is the issue of an alternative to traditional development that allows you to preserve agricultural land and open space in this particular location. She don't think granting the variance that they're seeking in this particular case would be substantially detrimental to the public good. It is colorful looking, when you drive by it's the most busy and colorful during the season, and there's no denying that but it is a purely seasonal activity and most of the impact of the use is going to be felt locally, primarily on weekend days rather than during the week, and certainly not at night, there's no nightie activity. It is closed during rainy weather and sometimes for days after a particularly heavy rain due to the flood surges in the river and also to protect the parking field from damage. The applicant plans to rotate use of portions of the field to give opportunities for resting of the fields in between. The applicants business basically promotes recreational use of the river that's consistent with State wide planning objectives and providing an organizing mechanism for all of the activity associated with the tubing, rafting and kayaking on the river, and provides a measure of public safety oversight with the patrol boats and also the required use of life jackets and ban on alcohol consumption. She feels that granting the use variance, in this case, will not substantially impair the intent and purpose of the zone plan and zoning ordinance. First of all this is a HC Zone which is intended for business uses, not like the Roller Rink site which is in the AR-2 Zone. But also she thinks the objectives of the Scenic Corridor Overlay Zone, a relative recent policy enactment on our part, not only that the applicants compliance with the parking and building set back requirement for previously developed site, except for the circular driveway that's going to ride around the site. Multiply the fact that most of the year the portions of the site that will be occupied during the summertime and later will be vacant land suitable and available for agricultural use. She understands the issue of wanting a stabilized surface, and she's not arguing about it. She also thinks there's a benefit to having the applicant have to till and re-plant. We have seen what happens when that's not done (referring to photos from the Boards engineer) on an annual basis. Those driveways have to be tilled every year and re-seeded so you can grow hay or at least have the appearance of it. There is a zoning issue associated with all of that and that is that she don't want this use, from a planning perspective, to establish a level of permanent usage and damage to the property or impact on the property and somebody else can come along and say, well even though this guy is gone, this is how it was used, look at these improvements, there's been an investment in this property, I would like it to revert to agricultural use until something comes along that is actually a permitted use. There's no reason why that can't happen and she knows that use variances run with the land and she knows the concern. If the applicant is willing to say when I vacate it, it will be completely vacated and I will take everything with me and restore the land, and the owner is not looking to have anything vested in terms of a right to continue any use other than this on the site, and if it's represented by the applicant as part of the nature of the application that's presented to the Board you may have the ability to take note of that and make that part of the approval. They have a very unique use and is not contrary to any of the intentions for our zone and she doesn't believe there's any other municipality that allows this use in a commercial zone. Kingwood doesn't allow this use in a commercial zone and why would we it's very unique unusual use. In terms of the C variances she already told us about the setback for the existing building and that's a legitimate hardship. In terms of the variances from the regulations that are due to the character of the use itself, she would submit to the Board and cited what all of them are. She believes that all

of them are promoted by the same purposes of zoning that she cited with the D variance. She believes that the objective of not only accommodating in this very appropriate use for this site, but also preserving your long term objectives for the Scenic Corridor Overlay Zone which is important and paramount in her mind. She feels the sign is appropriate for the nature of the use.

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

Both Chuck McGroarty, planner and Tom Decker, engineer indicated that they had questions but they would wait until the next meeting.

M.L. Haring – Thank you.

M.L. Haring – This will be a continuance to the July 8, 2015 meeting, without notice.

**OPEN TO THE PUBLIC:**

Mr. Hoffman – Madam Chair my client wants to make a quick statement.

M.L. Haring – We are presently open to the public so if you would like to say something.

D. Pierce – You can't address this application.

Greg Crance .....

D. Pierce – You're not providing testimony. Public comment – general issues.

Greg Crance stated that he was to the last Township Committee meeting and he informed them that it's essential and crucial for them (DRT) to be able to continue to operate during the variance process. They responded by telling him that he could continue to operate his business as we continue the variance process. He wanted to tell the Board in advance as to what he is doing.

M.L. Haring – Is there anyone else from the public that would like to address the Board with any other issues other than the application we heard this evening.

From the audience: Is the tubing place allowed to open?

David Pierce – What Mr. Crance was just saying was that the Township Committee, last Thursday, according to Mr. Crance, told him that he could continue to operate and open for the season providing he continues the variance application process. He has no personal knowledge of that. We would have to check with the Township Committee and the Township Clerk.

From the audience: Then why are we here? Why are we going through this? Was anybody notified?

David Pierce – I can't address that. I do not know.

From the audience – You're the Township Attorney?

David Pierce – No, I'm the Board attorney.

M.L. Haring – We aren't aware of any of that, as well.

C. McBride – Mr. Pierce he moves that you draft a letter from the Board of Adjustments and state to the Township Committee that we would like to have input in any decisions made on matters that are currently in front of the Board of Adjustments including the Delaware River Tubing matter. He would like to make that motion.

David Pierce -There appears there's no second for the motion.

John Mathieu – I'm kind of astounded. Mr. Crance, I have been a member of the Planning Board for 26 years and you pulled a good one tonight, never saw anything like this, and we'll get to the bottom of it you can rest assure. He had no idea and he could say that Mr. Pierce has stated accurately that he can't second guess what the Township Committee did. He would be astounded to find out that the Township Committee just said go ahead Mr. Crance you can just do what you want and when the Board gets around to making it's decision maybe you'll have to change a few things, moves some tubes from one side to the other. This Board has done an amazing job and if Mr. Crance is right – God Bless You, and if he's wrong he's gonna have some problems and I hope he understands that. He understands that very clearly and I hope his lawyer does too and his whole team that sitting over here. Because this is, in your face action and you can sit there Mr. Crance and shake your head and everything else but I've spoken my peace.

From the audience – As a resident of Kingwood his concern is if he operates and somebody gets hurt getting in on the bus, traffic accident. Is Kingwood Township liable because the variances for this have not been approved? Who's liable for something like that?

David Pierce – That's a question you'll need to raise with the Township Committee. If the Township Committee took that action this Board has no jurisdiction or authority to change that in any way.

David Pierce – It's not legal but the township shouldn't have any liability and as he understands it, Mr. Crance operated last year without a permit. He was cited to be in violation of local ordinances and he has appeared in municipal court and the enforcement actions brought in court have essentially been stayed or put on hold on the condition that he appear and apply before this Board for a variance for permits for that operation and it's his understanding, he don't have any direct knowledge, but his expectation is that the court actions are on hold until this process is completed. Then, if he receives an approval from this Board than the court enforcement proceedings will go away – maybe with some minor fines, he don't know. But, in terms of liability, he does not believe there should be any liability because it's an enforcement, it's a discretion issue.

From the audience – If something happens there gonna go after everybody.

David Pierce – The popular opinion is that lawyers will sue everybody. The township does have insurance to protect it against liability.

### **COMMUNICATIONS/REPORTS:**

Kingwood Township Minutes for April 2, 2015

### **ADJOURNMENT:**

The meeting was adjourned with a motion by D. Hewitt, seconded by T. Ciacciarelli. All in favor. The meeting adjourned at 10:55 pm.

Barbara Wilson  
Secretary