

## MINUTES

**PRESENT:** J. Abel  
M. Augustine  
R. DeCroce  
D. Haywood  
J. Lutz  
J. Mathieu  
T. Siano  
J. Strasser  
S. Zdepksi  
L. Herrighty, Alt. #2  
R. Lorentz, Engineer  
D. Pierce, Attorney

**ABSENT:** J. Harabedian, Alt. #1

**CALL TO ORDER**

The meeting was called to order by J. Lutz at 8:03 PM.

**NOTIFICATION**

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.

Notification of the time, date and place of this meeting has been published in the Delaware Valley News and Express Times and sent to the Hunterdon County Democrat, and has been posted in the Kingwood Township Municipal Building at least 48 hours prior to this meeting and has been filed with the Municipal Clerk.

**NEW AND PENDING MATTERS***Approval of Minutes*

It was moved by D. Haywood, seconded by M. Augustine and carried to approve the minutes of August 8, 2006 and place on file. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Strasser, who abstained.

It was moved by J. Abel, seconded by T. Siano and carried to approve the minutes of the Executive Session of August 8, 2006. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Mathieu and J. Strasser, who abstained. **It should be noted that all minutes of executive session shall be held as closed until officially released by the Planning Board.**

*Resolutions*

It was moved by J. Abel, seconded by D. Haywood and carried to adopt **Resolution No. 2006-23 – Viscardi/Claflin – Block 1.02, Lot 14.02**. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Strasser, who abstained.

It was moved by D. Haywood, seconded by M. Augustine and carried to adopt **Resolution No. 2006-24 – CDMA, Inc. – Block 19, Lot 10**. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Strasser, who abstained.

It was moved by J. Abel, seconded by D. Haywood and carried to adopt **Resolution No. 2006-25 – DeSapio – Block 6, Lot 9**. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Strasser, who abstained.

It was moved by D. Haywood, seconded by M. Augustine and carried to adopt **Resolution No. 2006-26 – DeSapio – Block 5, Lot 6**. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Strasser, who abstained.

It was moved by J. Abel, seconded by T. Siano and carried to adopt **Resolution No. 2006-27 – Frey – Block 29, Lot 28**. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Strasser, who abstained.

Resolution No. 2006-28 – First Unitarian Universalist Fellowship – Block 2, Lot 19

J. Lutz stated the applicant has requested the adoption of the above referenced be postponed until next month's meeting so their attorney has an opportunity to review the resolution.

It was moved by J. Mathieu, seconded by D. Haywood and carried to grant the request. All members present voted **AYE**.

***Tumble Partnership – Block 32, Lot 10***

It was moved by D. Haywood, seconded by T. Siano and carried to adjourn the above matter to October 10, 2006 without further notice being required. All members present voted **AYE** on **ROLL CALL VOTE**.

D. Pierce announced to the audience the application has been adjourned without the need for further notice or publication. The matter will be heard on October 10, 2006, same place and time.

***Schick – Block 14, Lot 39 – Request for Extension of Time to File***

C. Schick was present for the request this evening. He stated he has not received final approval from the DEP for the short crossing application. He is requesting a 190 day extension of time to complete the conditions of approval. C. Schick is changing the areas of restrictions but the lot lines will remain the same. He has removed some of the trailers. Some of the debris will have to be dismantled on the property prior to removal.

It was moved by J. Abel, seconded by D. Haywood and carried to approve the request for an extension of 190 days to file the deeds. All members present voted **AYE** on **ROLL CALL VOTE**.

***Van Holten Group, Inc. – Block 19, Lot 19 – Request for Amendment***

R. Traynor, representing the applicant, stated the applicant received minor subdivision approval a few months back. The first condition of approval required the applicant receive written verification indicating the location of the septic system is outside of the buffer zone. Both the seller and purchaser are eager to conclude the transfer and cannot do so until the deeds are released. The process to obtain verification can take six weeks or six months. The applicant would be willing to agree to no building permits being issued until the verification letter has been received and provided to R. Lorentz. He also requested an extension of time to file the deeds.

J. Abel stated a letter must be issued to the Construction office indicating the Planning Board does not want any permits issued until verification is received from the DEP indicating the septic system is not located in the buffer zone.

It was moved by S. Zdepski, seconded by J. Abel to grant a 90 day extension of time to file the deeds. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Mathieu, who voted **NAY**.

It was moved by J. Abel, seconded by J. Strasser to authorize the Planning Board to issue a letter to the Construction office that no permits be issued on the property prior to receipt of the letter from the DEP and confirmation from R. Lorentz. All members present voted **AYE** on **ROLL CALL VOTE**.

***Baumlin – Block 28, Lot 3.07 – Minor Subdivision***

G. DeSapio, attorney, and S. Norkevich, surveyor, and E. Baumlin were present for the application this evening. G. DeSapio stated the applicant proposes to create two new lots, one 4.50 acres and the other one 5.00 acres. The application complies with the current zoning.

R. Lorentz stated the application is for a Class II subdivision. In Note #6, it states the existing and proposed driveway meet Class II Standards. There is no existing driveway in the strip only proposed.

It was moved by S. Zdepski, seconded by J. Mathieu and carried to approve the above application with conditions. All members present voted **AYE** on **ROLL CALL VOTE**.

D. Pierce swore in T. Norkevich. He testified he did the wetlands study in January of 2006 and has spoken with a DEP representative. He anticipates the LOI would be given in late September of this year.

***Messina – Block 23, Lot 13. 01 – Minor Subdivision***

J. Burns, attorney for applicant, and Mrs. and Mrs. Messina were present for the application this evening. The application is for a minor subdivision of two lots. Lot 3.01 will have 4.15 acres and proposed Lot 13.19 will contain 4.53 acres. All the requirements of the ordinance have been met.

D. Pierce swore in T. Norkevich.

T. Norkevich testified the LOI had been issued in April 2006 under No. NJDEP1016-05-0034.1.

It was moved by J. Mathieu, seconded by R. DeCroce and carried to approve the above application with conditions. All members present voted **AYE** on **ROLL CALL VOTE**.

J. Abel stated the well water coordinator and the Environmental Commission have examined the area and there are, in the immediate vicinity of this property, properties that have marginal well yields and we strongly encourage you to drill the wells prior to construction. J. Burns thanked J. Abel for his comments.

***Keegan – Block 15, Lot 2 – Request for Waivers & Adjournment***

D. Pierce stated the Board of Adjustment granted an application to construct a second dwelling on their property citing Mrs. Keegan's health. The approval provided, if the property was not in familial ownership, the Keegans

would have to come in for a subdivision. The applicants are requesting waivers from the requirements they show constrained areas and the presence/absence of wetlands. The Board may or may not grant the waivers because there is no new construction and no change in the density. They are proposing to draw a lot line between the two houses. It is my recommendation the Board not grant the waiver to apply for a variance and pay the appropriate fee. There is a block barn located on the property and it encroaches on the side lines. The non-conformity was not created by the Board of Adjustment and the applicant can move the lot line. The applicant has requested the Board open the hearing and adjourn it so the applicant does not have a need to re-notice. The Board does not have the ability to grant their request to adjourn the hearing.

It was moved by J. Mathieu, seconded by D. Haywood and carried to table consideration of their request and request them to appear at the next meeting. All members present voted **AYE** on **ROLL CALL VOTE**.

***Laura Properties – Block 8, Lot 25.01 – Discussion***

G. DeSapio, attorney for the applicant, and F. Marchitto of Laura Properties were present for the matter this evening. G. DeSapio stated the applicant wishes to withdraw his request to be placed on the agenda. The applicant will comply with the new requirements of the ordinance. The applicant might be requesting some variances.

***Deer Run/Equestrian Village – Block 12, Lot 31 & Block 14, Lots 28.02 and 30 – Settlement Public Hearing***

D. Pierce stated the Board is opening the public hearing for the proposed settlement of litigation. The litigation involves the Planning Board, Township Committee and Board of Health. Under case law, adopted by the Supreme Court of New Jersey, every time a public entity settles a matter of litigation, they are required to have a public hearing. The settlement is either rejected or accepted in open session. The applicants, in these two cases, have brought litigation against the township. Deer Run, which is the property on the east side of Horseshoe Bend Road, consisting of 15 lots, challenged the well ordinance requirement of notice to property owners for interference testing and pump testing within 2500' of the property line. The Equestrian Village proposal, which originally proposed 63 lots, challenged the new zoning ordinance adopted in March. Under the settlement proposal, a similar hearing will be held before the Township Committee. The Deer Run application would contain 15 lots but the Equestrian Village would be reduced to 43 lots, with 3 lots being dedicated to the township as part of the settlement. The Deer Run property is approximately 76 acres. Equestrian Village is approximately 255 acres in size. The proposed settlement provides for a density of 5.5 acres per lot. Under the old zoning, four acres were required and under the new zoning, seven acres are required subject to environmental constraints. It is anticipated the Township may retain the three lots dedicated to them for open space and/or recreational usage, mostly passive. In the event the township were to sell the lots for future development, there was discussion amongst the Board members and Township Committee that any funds derived from the sale of these properties would be dedicated to the Township's open space fund. The settlement provides for \$31,250 per lot for affordable housing. On the Deer Run application, the funds would be paid within 45 days of the adoption approving the subdivision. In the Equestrian Village, the funds would be paid within 45 days of the latter of resolution approval or receipt of DEP permits. The settlement provides for the establishment of a well testing escrow for the Equestrian Village proposal in which the applicant would post an escrow in the amount of \$10,000, which would be used by property owners within 500' to monitor their wells during the pump testing. The applicant does not want the liability to have his own geologist enter into a private well. The settlement contains an escrow fund of \$1,820 per lot, \$100,000, to be held over a period of ten years in the event of any neighboring wells being rendered unusable by the development. It is fair to say that whatever happens, there will be houses built on these lots. If we are successful in court and win under the new ordinance or if the applicants are successful under the old ordinance, the applicant would be entitled to 61

lots in the Equestrian Village application and 17 lots in the Deer Run application for a total of 78 lots. Under the new ordinance, Equestrian Village would be entitled to 30 lots and Deer Run would be entitled to 8 lots, for a total of 38 lots. The number is a compromise. If the matter goes to court, it will be an all or nothing judgment, either the Township will win or they will win, having the ordinances thrown out and be entitled to 78 lots. In the Board's discussions, they talked about some of the merits of their appeals and challenges to the ordinance. He expressed his opinion that the challenge to the well ordinance has substantial merit and there is a very substantial chance the Township would lose that challenge. The application on Deer Run was filed prior to the adoption of the new zoning ordinance and the application was deemed incomplete. It was deemed incomplete on a hyper-technicality. The well tester did not observe the well to rebound to the required level. The well rebounded to 98% within a few minutes. Litigation would be quite expensive, at least \$150,000 or more. We are looking at the pros and cons. One of the pros would be certainty. The Township knows, under the terms of settlement, what size the development will be. The cons would be the uncertainty and the expense of litigation. The applicant has been assessed roll back taxes and has challenged those assessments and appropriateness because they do not have final approval. Under the settlement, the roll back taxes, still being discussed, will be paid immediately upon settlement or dismissal. Some of the opposition to the development is the potential impact on wells and the water supply in the area. The settlement provides for protection of those concerns. If the matter goes to litigation, the escrow funds would not be present. The above comments sum up the discussion on the issues relating to the proposed settlement and the matter should be opened for Board discussion and questions. After discussion and questions from the Board, the matter should be opened to the public.

J. Abel stated the Board and the public knew when they were making efforts to change the zoning from four to seven acres and there were applications in progress, compromises would have to be made. If the Township accepts the three lots, those funds can be used for further preservation effort. The Board looked at the potential of the build out of the Township at 900 lots. The Township is going to see further development but with the ordinances in place and not defeated in court, it will significantly limit the outcome for the Township. He is in favor of the settlement. The details of the settlement, as presented by D. Pierce, are unaltered from the presentation given to the Board at last month's meeting. The Board was in favor of D. Pierce proceeding with the settlement.

J. Mathieu stated he received the settlement proposal 20 minutes ago and has substantial problems with the affordable housing aspect of the settlement and the need for the Township to create a housing authority with employees. The Township would be going into the development business. The developer should handle the housing. He needs time to read the documents. It is only a draft not a final copy. The Executive Session minutes are 3.5 pages long. He wants the ability to read the entire settlement prior to voting on the agreement of the settlement. As a result of the Executive Session, he agreed to the sale of the three lots for the preservation of future open space.

D. Pierce stated one of the issues raised in respect to the three lots being dedicated to the Township was the developer showed a detention basin on one of the lots. As part of the discussion, the detention basin has been removed. If the Township accepts the three lots as part of the settlement, there are no maintenance requirements for the handling of the drainage for the development.

S. Zdepski stated, at the Executive Session, last month, all the points of the settlement were raised and one point, raised by J. Mathieu, was the detention basin on one of the lots. The applicants agreed to remove the basin. The settlement is stamped "draft" but if the Planning Board approves the settlement, it is no longer considered a draft.

D. Pierce stated there are still one to maybe three very minor wording issues, which are not substantive in any way, that they have not been able to finish negotiating. The applicant wanted to have the settlement void if they did not receive DEP approvals or a contest by surrounding property owners. The substantive terms have not changed.

J. Lutz stated the Board should take their findings at face value and, unless, there is something severely wrong with the settlement, this proposal should be accepted as it has been written. In these negotiations, the applicants acted extremely professional. In my personal view, they gave over things that were far beyond what they had to affect the settlement.

J. Abel stated the Board was advised by our attorney that the Board's approval and recommendation to the Township Committee of their approval, will allow every member of the public to receive a copy and be prepared to ask questions at the public session before the Township Committee. It is important for this Board to remember each and every one voiced our support to move forward with the recommendation of the attorney. Grandstanding at this point to say it needs to be delayed further does not fully comply with what he said he was going to negotiate. We owe it to him and ourselves as a Board. There is no credibility if we send our attorney to settle a case and once presented with the public fail to adopt the settlement.

J. Lutz opened the matter to the public.

T. Hauck inquired if he could see the layout of the Buckeye Pipeline in relation to the three lots dedicated to the Township. D. Pierce responded the pipeline does cross the three lots. T. Hauck inquired of the results of the perc and soil testing on the three lots. R. Lorentz did not know the results specifically. D. Pierce commented, in response to T. Hauck's questions, if for any reason, the lots have not perced, they will not be part of the settlement. They will still have to meet the ordinance requirements.

R. Dodd commented on the Board's willingness to approve a settlement they have seen for only 20 minutes. He inquired how many properties surround the development. D. Pierce stated the \$100,000 is for well replacement and the \$10,000 is for well monitoring during the testing. D. Pierce is not sure of the amount of lots surrounding the development. D. Pierce stated the \$10,000 is an escrow and if it is exhausted, the applicant will have an obligation to replenish. D. Pierce is not sure of the cost of testing a well. The cost might be approximately \$1,200.00. R. Dodd expressed his concern in regard to the enactment of a zoning ordinance that you do not have enough confidence to defend.

J. MacConnell commented the Board should take a month to read the document and then take a vote. The Board has to read the document.

W. Pandey inquired if the escrow account for the testing of the wells on Equestrian Village is limited to 500' from their drilled well. D. Pierce stated it was 500' from the outlying property line. W. Pandey stated there are problems with wells located 2,500' feet from the property so 500' is inadequate.

J. Lutz stated the comments made at this time should pertain to the settlement agreement. The agreement is not an approval for subdivision and will not cause the subdivision to be approved.

S. McNichol commented the Board should read the settlement paper and wait a month before a final determination is made. It is a big project and will impact us all financially.

B. Kastning commented the Board should read the settlement document. He inquired, of D. Pierce, the legal downside of a month's delay. D. Pierce responded there is no legal requirement the Board act this evening. D. Pierce stated the only incentive to the Board to consider it tonight is whether the applicant would be willing to extend the settlement offer for that period of time. If the applicant thinks there will be some sort of delay, he might walk away from the table. B. Kastning inquired if the applicant was present this evening. D. Pierce responded he is present.

D. Pierce, in response to W. Pandy's, commented on the 500' well testing limit. He stated T. Hauck has indicated the interaction or interrelation of the aquifer and the wells is based on a strike and dip of the bedding plains in the bedrock and geological structures. A well in one location will not interfere with anything and, if you move it 50', it might affect a number of wells. No interference testing will provide protection for every well. There is a provision to repair, replace or restore the wells which might be affected in the future.

It was moved by J. Able, seconded by T. Siano and carried to close the public hearing. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Matheiu, who voted **NAY** and J. Strasser and L. Herrighty, who abstained.

J. Mathieu stated the board never discussed page 15, number 28. It takes away a substantial part of their contribution for off tract improvement. R. Lorentz stated the applicants have accepted the responsibility for the frontage improvements.

D. Pierce stated he understands the reluctance to adopt something the Board has seen for a short time. The Board was proposing to make a compromise on its rights. There are details the law requires and, other details, such as the two driveways, which were not discussed in Executive Session. The placement of the driveways, one on Equestrian Village and one on Deer Run, which access the public road were negotiated. The lot on the Equestrian Village side would be rerouted to be an interior access lot only. The other lot, Deer Run, could not be relocated due to the steep slope and wetlands configuration. It is reflected in the agreement the Board would agree to grant a waiver to allow the lot on Equestrian Village access to the cul-de-sac road.

S. Zdepski called for a point of order.

R. DeCroke stated he values our attorney's opinion that there is not much of a chance if the applicant's proceed with the lawsuit. If we do not approve the settlement, the Township could end up with more houses.

D. Haywood stated she trusted the negotiators and the attorney has represented us fairly. The summation D. Pierce presented to the Board provided for the items discussed in Executive Session last month.

J. Strasser stated he will have to abstain if he has not read the settlement document.

M. Augustine stated she has more objections than anyone on the Board since she lives on Horseshoe Bend Road. She has put faith in the attorney and the negotiating team did an excellent job. The Township is going to have a development there regardless, whether we win the litigation or lose it. It will not be stopped. Other matters might be raised when the final application is made to the Board. She is going to abstain. There will be an increase in traffic on Horseshoe Bend. She commented there will be additional funds coming into the Township, which we always need and the reduction in lots. She feels it was a great job done by the negotiating team and attorney.

J. Lutz commented to the Board and audience. The settlement agreement will be presented twice more, once before the Board of Health and once before the Township Committee. The Township Committee will be making the final decision.

It was moved by S. Zdepski, seconded T. Siano and carried to close the discussion on the settlement agreement. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by S. Zdepski, seconded by D. Haywood and carried to approve the settlement. All members present voted **AYE** on **ROLL CALL VOTE**, except J. Mathieu, who voted **NAY** and J. Strasser, who abstained.

## **CORRESPONDENCE**

J. Lutz reviewed as per the agenda.

## **PRIVILEGE OF THE FLOOR**

J. MacConnell commented on a prohibition of all in-ground sprinkler systems being fed off a well.

B. Kastning inquired why the Keegan matter is not being presented to the Board of Adjustment. D. Pierce responded the subdivision is requesting a bulk set back variance which the Planning Board can grant. B. Kastning stated once before the Board of Adjustment, it stays under the jurisdiction of the Board of Adjustment.

S. McNichol commented on a meeting in July with S. Zdepski and R. Lorentz and some representatives of the DEP in regard to not requiring an LOI on small subdivisions. Can they provide the names of the people they met with? R. Lorentz responded "Brubaker", head of enforcement at that time, L. Patuna and A. Perez. R. Lorentz stated they claimed to us they were not anxious to be called out on these situations and the more we can do to nip in the bud was the better way to go. R. Lorentz stated they were not interested where someone has an existing lot of record for many years and decides to do something in their yard and, unknowingly run afoul of other regulations such as wetlands or Cat-1 buffers. The DEP wanted to encourage the education of the public as best as possible. They did not want us to take over enforcement but provide a higher level of awareness within the Township.

J. Pandey commented on the public discussions occurring at the meetings. It seems when blood pressures start to rise the public comment is cut off. The public should be able to speak but not be allowed to repeat the issue. J. Lutz stated he did not see any hands or heard anyone when he made the comment to close the public hearing.

R. Dodds commented the agendas are on the Township website and would appreciate seeing the minutes. The last minutes are from January 2006. He would like to see the current minutes posted on the website.

E. Nieman inquired if the Board was going to repair the faults and shortcomings in the new zoning ordinance. S. Zdepski responded there are no shortcomings. One part of the settlement pertains to an application that was filed when the new changes were being made.

J. Scricco inquired if the Board could direct him to the proper official in regard to the problems he has been having with his neighbors. It seems as if his neighbors are harassing him by making improper comments and causing nothing but grief.



S. Zdepski stated the Planning Board cannot help him but instructed him to contact M. DeSapio, Zoning Official, J. Abel, Deputy Zoning Official and for him to attend the Township Committee meeting in October.

**ADJOURNMENT**

It was moved by J. Mathieu, seconded by T. Siano and carried to adjourn the meeting at 10:45 PM. All members present voted **AYE**.

**Respectfully submitted,**

**Diane Laudenschach, Secretary**