

MINUTES

PRESENT: R. Dodds
D. Haywood
J. Mathieu
S. McNicol
E. Niemann
L. Senus
J. Strasser (8:30 PM)
D. Posey
T. Decker, Engineer
D. Pierce, Attorney
D. Banisch, Planner
A. Clerico, Planner

ABSENT: M. Augustine
T. Kratzer
M. Syrnick, Alt. #1

CALL TO ORDER

The meeting was called to order at 8:05 PM by J. Mathieu.

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 R. Dodds and carried to approve the minutes of April 8, 2008 with the following correction:

Page 4 - #5 –correction of resolution number to 2007-10

All members present voted **AYE** on **ROLL CALL VOTE**.

Release of the January 8, 2008 Executive Session Minutes

It was moved by S. McNicol seconded by E. Niemann and carried to release the January 8, 2008 Executive Session minutes. All members present voted **AYE** on **ROLL CALL VOTE**.

Resolutions

It was moved by R. Dodds, seconded by D. Haywood and carried to adopt **Resolution No. 2008-07 – Schick – Block 14, Lot 39 - Extension of Time to File**. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by S. McNicol, seconded by R. Dodds and carried to adopt **Resolution No. 2008-08 - Penn Jersey – Block 15, Lot 8.05 – Phasing of Project** with the following correction:

Page 5 - #5 – correction of resolution number to 2007-10

All members present voted AYE on ROLL CALL VOTE.

BDAC, LLC – Block 23, Lot 17.02 – Barbertown Point Breeze Rd – Class II Minor
Subdivision – Determination of Completeness

R. Lorentz, engineer, and A. Belle, applicant, were present for the matter this evening.

A. Belle inquired if J. Mathieu's abstention on Resolution No. 2006-20 was due to a conflict of interest. J. Mathieu responded there was no conflict of interest.

T. Decker issued the following memo:

Item #3 – Plans for Improvements

This item is marked as “May be required due to unusual circumstances” on the checklist. However, our office feels that this information should be provided in order to adequately review the plans on a technical basis. Of particular concern is the common driveway and stormwater management requirements.

R. Lorentz stated there are no improvements in the traditional sense proposed by this application. The only item that could be considered an improvement is the Class II private drive. The drive already exists and would satisfy the conditions of a Class II drive, except for the paved apron, in terms of width and construction. It was installed in 2006.

T. Decker responded if the project contains .25 of an acre net impervious or more than an acre of disturbance, stormwater management issues need to be addressed. It is easy to exceed the .25 of an acre of impervious with individual driveways, common driveways and the houses. The Township does not have a mechanism to review stormwater management after approval has been granted. There is no individual stormwater management permit required for each lot. The .25 of an acre is over the entire parcel as it exists today.

R. Lorentz stated the current drive can serve, without further improvements, for Lot 17.02. The equipment storage pad, constructed in 2006 and currently existing, could serve as the site for a house, which would further reduce the amount of new impervious coverage. It would be reasonable to assume a 2000 sq ft house print, 1200 sq ft drive turn around area and an approximate 10 x 100 private driveway leading to the house site off the common driveway would generate 4200 sq ft of impervious coverage on each of the new lots. An additional 2000 sq ft representing the house on Lot 17.02 which would total 10,400 sq ft, is under the .25 of an acre. The applicant would be willing to submit to those configurations as limitations. Another suggestion that the applicant would be amiable to is the inclusion in any approval the requirement for the installation of a drywell system to capture roof run off for any of the new houses, which would remove the houses from the picture of increasing impervious coverage. The existing drive is approximately 12,000 sq ft and the equipment storage pad is 7,200 sq ft which totals approximately 20,000 sq ft of existing coverage.

T. Decker stated the stormwater management regulations came into effect in February of 2004. The regulations provide for any net increase over .25 of an acre since February of 2004.

R. Lorentz stated the local stormwater ordinance did not go in to affect until 2006 and does not contain a retroactive provision, as do the state regulations.

D. Pierce stated he does not think there is a retroactive provision in the township ordinance. It is his recollection that the state regulations in 2004 were applicable to all new development or major development defined as over .25 of an acre of impervious coverage. It provided regulations until such time as the local municipalities enacted their ordinances. Going from memory, any development that fits the definition of a major development would be subject to the stormwater regulations. He would suggest the Board defer this issue until he is able to research and review the regulations and give the board an opinion.

R. Lorentz requested if the stormwater management regulations pertain to this application, would the Board be agreeable for it to be done on an individual lot basis by imposing conditions on the development of each lot? The applicant would like flexibility due to the fact that at this time there is no real knowledge of what is going to be built on the lots.

T. Decker does not have a problem with individual stormwater management designs. There has to be a mechanism in place for when the individual lots come in for development.

J. Mathieu inquired about the lot circle for Lot 17.04 extending into the 300' buffer. R. Lorentz responded it is permitted as long as it is in the regular set back lines. T. Decker responded the ordinance provides that the 200' circle be inscribed within the building envelope and is defined as being the area found by the set back lines not by the environmental constraints.

A. Belle stated the location of the drive accessing the back lot where agricultural equipment is stored was at the recommendation of his excavator.

Item #10 – Property Owners’ Telephone Numbers

Phone numbers have not been provided on plans.

Item # 12 – Proposed Block and Lot Numbers As Approved by the Tax Assessor

Certification by Tax Assessor has not been received.

R. Lorentz stated the certification has been received by the tax assessor and the lot numbers indicated on the plat are in agreement with that certification.

Item #15 – Certified by the Municipal Tax Assessor

Certification by Tax Assessor has not been received.

Item #20 – Date of Approval of Most Recent Previous Subdivision of Tract

Existing Lot 17.02 was created by a recent minor subdivision. Documentation is required.

R. Lorentz stated the information was not included on the plat. A. Belle responded it was approved in August of 2006 and amended in October of 2006.

Item #21 – Contours and Topography within 200 Feet

Information is required within 200 feet including area opposite of Barbertown-Point Breeze Road.

R. Lorentz stated the topography is required not the contours within 200'. He has shown the two driveways opposite the tract. The information that is available indicates not a significant change in the grade. The transfer point is to the creek.

J. Strasser entered the meeting at 8:30 PM.

Item #22 – Existing and Proposed Drainage Facilities on Tract and within 200'

Information is required on County Bridge K-25 and opposite of Barbertown-Point Breeze Road.

R. Lorentz stated the information on Bridge K-25 is on the plat. It was addressed as part of the prior application and the required bridge maintenance easement has been filed with the county. The county has issued a full approval of the prior application. The ROW was dedicated along Barbertown Point Breeze Road under the prior application. The applicant can provide documentation the item is satisfied by the prior activity. The county is reviewing the current application and will comment if necessary.

Item #26 – Lot Grading Plans

This item is marked as "May be required due to unusual circumstances" on the checklist. However, our office feels that this information should be provided in order to adequately review the plans on a technical basis. Of particular concern is the common driveway and stormwater management requirements.

R. Lorentz stated the grading plans relate more to stormwater issues and can be handled as part of a condition and a future review.

Item #27 – Location of Natural Features to be Preserved

Conservation easements have not been provided.

R. Lorentz stated the conservation easements have not been indicated. The wetlands, transition areas and 300' Category 1 stream buffer are controlled by the NJDEP. Those areas are protected by state regulation. He will leave it to the board's determination if you want additional information. R. Dodds stated the board has been discussing requiring conservation easements. R. Dodds also stated the monitoring done by the state is very minimal. S. McNicol stated the board wants to raise the awareness for future homeowners to be aware that certain restrictions apply. J. Mathieu stated the development across the street of the proposed development agreed to no structures or cutting of trees within the 100 year flood plain along the creek. R. Lorentz suggested along the lines of a blanket easement rather than a formal course by course description. A map attachment in the filed document would graphically depict the location of the easement and coupled with the demarcation of where the line crosses the property would give the homeowners notification. It is quite a cumbersome thing to be described by metes and bounds. J. Mathieu stated an easement gives the township and property owner an understanding of what is permitted and not permitted in the area. A. Belle stated that if he was to voluntarily grant an easement it would effectively devalue the property from any land trust or green way that might have an interest in purchasing the easement. A. Belle stated he would not want to give up anything that he could be compensated for in the future from one of those agencies. R. Lorentz stated the buffer is reduced to 150' in those areas already in agriculture. The lesser buffer needs to be delineated and is not quite as strict as the board describes. D. Banisch stated the NJDEP does not allow any structures or cutting within the 150' and no structures outside of the outer 150'. D. Banisch also stated you can continue to farm.

Item #29 – Soil Erosion and Sediment Control Plan

This item is marked as "May be required due to unusual circumstances" on the checklist. However, our office feels that this information should be provided in order to adequately review the plans on a technical basis. Of particular concern is the common driveway and stormwater management requirements.

R. Lorentz stated it is more appropriate to handle this item during the development process.

Item #30 – Stormwater Calculations

This item is marked as “May be required due to unusual circumstances” on the checklist. However, our office feels that this information should be provided in order to adequately review the plans on a technical basis. Of particular concern is the common driveway and stormwater management requirements.

R. Lorentz stated the applicant would be willing to provide the board with their position on the applicability of the standards.

Item #34 – Delaware & Raritan Canal Certification

Certification is required from the D&R Canal Commission regarding review zone.

R. Lorentz stated the prior application received a letter from the D&R Canal Commission indicating the subdivision may proceed without further review. He has looked back as to what has been put on since 1980 and has found virtually nothing but the drive. There is the potential for an additional 5,000 sq ft of impervious coverage on the lot created by the 2006 subdivision. The existing structures on Lot 17 all predate 1980. They are old buildings and farm structures. The cumulative total of what is being proposed would not make the development exceed the one acre. The applicant would be willing to provide the board or engineer with the calculation. T. Decker inquired how would the limitation be regulated on a lot by lot basis? T. Decker stated the applicant does not know if these lots will generate an acre of impervious coverage. R. Lorentz stated the applicant may need to update the D&R Canal Commission on this application and obtain their concurrence as part of the application process.

Item #38 – Stormwater Management Plan and Supporting Calculations

This item is marked as “May be required due to unusual circumstances” on the checklist. However, our office feels that this information should be provided in order to adequately review the plans on a technical basis. Of particular concern is the common driveway and stormwater management requirements.

Item #42 – Right to Farm Language on Deeds

Right to farm language is shown on the Subdivision Plan but not on submitted deeds.

R. Lorentz stated the deed will be revised.

Item #43 – Hydrogeological Report and Pump Testing

Although indicated as “Not Required” on the checklist, Ordinance Section 153-29 requires testing and report.

A. Belle stated he was confused by the stance of the engineer. The public record indicating the official copy of the ordinance, adopted on January 7, 2007, states clearly that the hydrogeological report and pump test on the subdivision of two or more lots is only needed for the issuance of a building permit. The only amendment to the January 7, 2007 ordinance dealt with Section 130. D. Pierce responded the testing is a requirement under the issuance of a building permit. It will be a condition of approval.

Item #45 – Affordable Housing Plan

Not provided.

R. Lorentz stated the current standard is 1.5% and not a growth share number. D. Pierce stated the DCA has advised the municipalities to continue to apply the growth share ordinance, which has an exemption for minor

subdivisions. D. Pierce read the requirement from the township's growth share ordinance and since the lot is being resubdivided within the three year period, it is subject to a growth share obligation. D. Banisch stated the applicant might consider providing an affordable housing unit in an accessory structure. The development will require a 3/4 unit of an obligation. He further stated towns are being affected with retroactivity.

A. Belle inquired if Lot 17.02 were to put in a cottage or apartment, would a growth share payment still be required? Is there a time frame of when the unit would have to be provided? D. Banisch responded he will have to review the request.

Item #50 – Freshwater Wetlands LOI or Presence/Absence Determination

Plans indicate that NJDEP has approved the wetland delineation. A copy of the Letter of Interpretation should be submitted.

R. Lorentz stated an LOI is in existence and he will provide a copy for the file. A. Belle responded the LOI was received on February 6, 2007.

Item #52 – Written Requests for Individual Waivers and/or Variances

Written requests from any of the noted items is required.

R. Lorentz stated he does not think there are any variances required.

Item #53 – Copies of any existing covenants and deed restrictions

None submitted. Applicant to confirm that none exist.

R. Lorentz stated he is not aware of any covenants or restrictions at this time other than those imposed by the environmental conditions.

D. Pierce stated, through the comments by T. Decker and D. Banisch, there are a number of items that a waiver might be appropriate, items which have been satisfied and other items that can be satisfied with the submission of some documents.

T. Decker stated he agrees with D. Pierce's comments. He will have to look at the hypothetical location of the buildings, the 300' stream corridor and the set backs. The regulations require the setbacks to be made from the top of the banks. R. Lorentz stated the measurements for the setbacks were taken from a prior map.

D. Banisch stated Lot 17.05 will require a variance since it does not have 2 acres of non-constrained area. The applicant might want to reconfigure the lot. If the applicant is not willing to move the line, he will have to notice for the variance. Lot 17.05 does not contain 2 acres of area outside of the stream buffer, which is required by the definition of a Class II subdivision. He suggests the line should be moved to the north. With the moving of the line, Lot 17.04 might be problematic in the encroachment of the stream corridor buffer. The constraints and buffers will impact both Lots 17.04 and 17.05.

D. Pierce stated, Lot 17.04, would require a variance since it contains 1.625 acres of constrained land and constrained land receives a half credit, which makes the lot drop below the required 4 acres for a flag lot.

R. Lorentz stated he does not agree with D. Banisch's and D. Pierce's interpretation of the text of not containing less than two acres of land. Partial credit allowance refers to the overall tract yield calculation which does support the creation of one 2 acre lot and 2-4 acre minimum flag lots as a Class II. The comments made this evening are a new interpretation of the ordinance to him. There are subdivisions in place that do not comply with this interpretation. The fact that there are constrained lands does not mean the land does not exist on the lot. For configuration of the application he subtracted at 0.5 to come up with a net of unconstrained lot area and

divided by the zoning lot acreages for the lot yield. He has not seen an interpretation of what D. Banisch has indicated to exclude those areas from the acre calculation. An example of the lot circle Mr. Banisch is referring to would tend to make every lot oversized.

D. Pierce stated the Board needs to make an interpretation of the ordinance and determine if D. Banisch's interpretation or R. Lorentz's interpretation applies to this application. In complying with the determination, either an amended application or variance would need to be filed or the application deemed incomplete.

D. Banisch read the following:

Section 115-3 defines a Class II Minor Subdivision as "consisting of not more than three new residential lots and a remainder, up to two of which lots may be building lots with frontage of at least 200 feet on a public road existing as of April 30, 1996, and contain not less than two acres of land after taking into account the partial credit allowed for constrained areas and the minimum buildable area requirement...". In accordance with the definition for minor subdivision it appears that Lot 17.05 does not contain the minimum two acres of land after taking into account partial credit allowed for constrained areas. Variance relief may be required.

D. Pierce stated there is room for confusion in the ordinance. D. Pierce read Section 132-30(a). There is support for both positions in the ordinance. One of the general tenants of statutory interpretation is the specific prevails over the general. The specific is the definition of the Class I and II lots. The general is Section 132-30.

J. Mathieu stated there were two potential remedies:

The applicant accepts the interpretation of Mr. Banisch and does a lot line change which changes the configuration of the subdivision.

or

The applicant requests the board grant a variance.

R. Lorentz stated by meeting the tract yield density, the issue goes away. It is not a simply process to move the line.

D. Pierce stated, if the matter was continued, the applicant would need to grant an extension of time to determine completeness and the Board would have some time to consider the issues.

R. Lorentz stated a possible option was to continue to move forward with the alternative of applying for the variance or reconfiguring the subdivision in time for a future meeting. The variance request would state its merits. The reconfiguration is a little more complicated since it affects all three lots. There are other considerations that Mr. Belle has as to the further encroachment of the building lots into the stream corridor. The reconfiguration can be done in a northerly/southerly change.

A. Belle stated it his understanding that the Board would rather see the lot line go through the hedgerow and have a smaller non-conforming center lot to go along with the hedgerow.

R. Lorentz stated if one of the lot lines were moved sufficiently north to make the front lot comply, his concern is it then brings the total bulk of Lot 17.04 under four acres, without considering the constrained areas.

D. Banisch stated he can see why the Board would want to grant variance relief for the second lot to run along the current hedgerow and be able to provide credible reasoning.

D. Pierce stated he agrees an argument can be made for a benefit to the public for that deviation of the standard. It is not as if the overall development is going to be any more dense than what would be permitted under the ordinance.

T. Decker stated he agrees and the tree lines make natural dividers. The Board might want to consider some kind of tree preservation deed restriction so the tree line cannot be cleared. The variance on Lot 17.04 to make that lot smaller benefits Lot 17.05 more than it detracts from Lot 17.04.

The Board members were polled and were in favor of moving the lot lines.

D. Pierce stated R. Lorentz is requesting a determination that the application be deemed conditionally complete subject to supplying the variance application and revised plans within the time period for the next meeting. The plans have to be in by May 27, 2008.

It was moved by R. Dodds, seconded by J. Strasser to grant the following waivers for completeness only: #3, 21, 22, 26, 27, 29, 45 and 52 and partial waivers for # 34 and 38. The applicant will submit the letter from the D&R Canal Commission, improvements since 1980 and stormwater calculations. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by D. Haywood, seconded by L. Senus and carried to determine the application conditionally complete. The conditionally complete items are: variance application, appropriately revised plans and submission of the plans, #12, 15, 20, 34 & 38 to the extent they were not waived, #42 and #50 of T. Decker's memo. All members present voted **AYE** on **ROLL CALL VOTE**.

E. Niemann recused herself from her position on the board for the next matter.

Galleria Construction – Block 39, Lot 7 – Barbertown Idell Road – Minor Subdivision
w/variance – Determination of Completeness

B. Casuscelli and P. Casuscelli were present for the matter this evening.

T. Decker provided the following memo to the Board.

General Plan Comments – Per G&A Review Letter of September 6, 2007

1. The subject property is located within the AR-2, Agricultural and Single Family Residential District consisting of 6.57 acres. Applicant proposes to create two (2) residential lots having areas of 2.17 and 4.40 acres. ***Layout has been revised to propose lots of 3.08 and 3.14 acres in size.***
2. Section 132-30F(6) of the Kingwood Township Zoning Ordinance requires a minimum one (1) acre of contiguous buildable area on each lot. Lot 7.02 and remaining Lot 7 propose buildable areas of 0.78 acres and 0.83 acres respectively. A variance is required. ***Revised layout eliminates variance on Lot 7.02. Buildable area on Lot 7 has been revised to 0.44 acre. Applicant has requested a variance. Testimony is required.***
3. Net buildable lot area calculations are required for each lot consistent with the definition of “Buildable Area” as contained in the Zoning Ordinance. ***Satisfied.***
4. Net buildable area on remaining Lot 7 should be clarified as to which side of the wetland area it reflects. ***Satisfied.***
5. A deed restriction is required on Lot 7.02 limiting the dwelling to no more than 3,000 square feet. As it is less than 4 acres in size. ***Revised layout proposes both lots as less than 4 acres in size, therefore the deed restriction applies to both lots.***

6. 200-foot diameter circles are incorrectly shown on the plans. By definition the lot circle is to be tangent to the front setback line and located entirely within the building envelope. However, it should also be noted that the lot circle is not required in a Class I Minor Subdivision. *Satisfied. Circles have been eliminated.*
7. Wetland transition areas must be added to the plan and associated conservation easements provided with metes and bounds. Depending on the wetland classification, the transition area impact may be significant on the available buildable area. *Partially Satisfied. Wetland transition areas have been added. Conservation easements with metes and bounds remain outstanding.*
8. Lot areas should be calculated exclusive of the 25-foot Right of Way dedication. *Satisfied.*
9. Metes and bounds are required along the Right of Way dedications with tie distances. *Satisfied.*
10. Capped irons or concrete monuments shall be set at all property corners in accordance with the Map Filing Law. *Outstanding.*
11. The existing stone row along the southern property should be contained within an easement for preservation purposes. *Satisfied.*
12. Information should be provided on the former soil test locations. *Outstanding. Soil logs noted as former and conducted by Frank Mazzella need to be provided and certified.*
13. Passing septic testing for Remaining Lot 7 is located to the rear of the lot bound by the wetlands and without road access. Approvals from NJDEP will be required for the wetland crossing. *Satisfied by revised layout.*
14. Our office defers to the review Banisch Associates, Inc. memorandum of August 3, 2007 for additional comments. *Continued comment.*

Stormwater Management

Stormwater management measures are not currently proposed. Stormwater management is required for projects which create a cumulative increase of ¼ acre or more of additional impervious area or disturb one or more acres of land.

The applicant should demonstrate that the two lots can be improved to accommodate a typical home, driveway and appurtenances without exceeding the above thresholds for the project as a whole. *Partially Satisfied. Plans have been revised to indicate a dwelling and driveway associated with each lot. Impervious area calculations should be provided for proposed coverage. Each lot would be permitted a maximum impervious area of 5,445 sf (1/8 acre) before triggering Stormwater Management requirements and review.*

Administrative

1. Subject to unconditional approvals of the following agencies:
 - a. New Jersey Department of Environmental Protection
 - b. Hunterdon County Planning Board
 - c. Hunterdon County Soil Conservation District
 - d. Any other agency having regulatory jurisdiction.

2. Application is subject to off-tract improvement contributions to be agreed upon with the Township Committee.

T. Decker stated, as a completeness standpoint, the technical items are not subject to tonight's meeting. In regard to comment #12, his office has received the necessary documentation. The signature of the property owner is not on the original submission.

D. Pierce stated the application is complete and can be scheduled for a hearing.

It was moved by S. McNicol, seconded by R. Dodds and carried to deem the above application complete. All members present voted **AYE** on **ROLL CALL VOTE**.

E. Niemann resumed her seat on the Board.

Conservation Plan Element

D. Banisch stated he is still working on the Conservation Plan Element and will have a copy for the June meeting. The project team met at the end of April and made some good progress on making comments on what flows better, including more protective language. In regard to septic testing, he stated it can be added as a policy recommendation. He has heard about problems enforcing the regulation. R. Dodds stated he is aware of some towns requiring licensing of onsite disposals. J. Mathieu stated it could be handled through the section where public education on environmental issues is discussed.

Deed of Conservation Easement (Draft);

D. Pierce stated he took the form J. Strasser and R. Dodds provided and attempted to put that in the form of a recordable instrument. The proposed form of conservation easement would be applicable to conservation areas that are currently being farmed or eligible for any exceptions for current use.

Lindabury, McCormick and Estabrook – Advisory Committee on Professional Ethics - Determination

D. Pierce stated he has received a response from the Advisory Committee on Professional Ethics regarding if county counsel has a conflict of interest on an application if it was going to appear before the County Planning Board. The Committee found that there was a non-waivable conflict of interest which is applicable to his entire firm. He should not be permitted to represent any applicants before any board that might have to appear before the County Planning Board. He has not notified him yet.

CORRESPONDENCE

J. Mathieu reviewed as per the agenda.

PRIVILEGE OF THE FLOOR

Block 22, Lot 17 – Severino Homes

T. Decker stated he has spoken to the developer and he has been able to get only one bidder on the fence. The developer is trying to get more bids. The fences were a bonded item. As a result of comments made by board

members regarding the standing water in the basin and swales, T. Decker responded the water sits in the roadside swales for awhile, as designed, and then infiltrate. The same situation is for the bio-retention swales.

The board discussed briefly the underground retention basins. D. Pierce responded the easements for the underground retention basins are given to the Homeowner's Association and the Homeowner's Association is required to maintain them. The Township has the right but not the obligation to conduct the maintenance and charge the Homeowner's Association. T. Decker stated the DEP has a maintenance manual. The builder retains the ownership of those systems.

Cacciabaudo – Block 37, Lots 3.05 and 3.06

D. Pierce stated he has received a request from R. Cacciabaudo to convert the five lot subdivision into a two lot subdivision. The second lot, that he is proposing, does not have actual road frontage and would require a variance and access easement. R. Cacciabaudo is seeking some guidance from the Board. He recommends the Board request R. Cacciabaudo apply for an amendment to the existing approval. After a brief discussion among the board members, the board decided to schedule an Executive Session next month due to potential litigation.

DEP Meeting

J. Mathieu stated he and J. Burke met with two representatives from the planning area of the DEP. The meeting entailed a discussion of the Township's goals. The DEP was prepared to provide us with model ordinances, planning ideas for hamlets and any other resources they have available to them.

COAH

D. Banisch stated the new regulations are going into effect on June 2nd which will increase the township's affordable housing obligation considerably under the 3rd round. The Township has to re-petition COAH for substantive certification on or before December 31, 2008. The Township has a prior round obligation of nineteen units and only a portion has been addressed. He reviewed his memo:

1. The purpose of this memorandum is to provide the Planning Board with an update on recent changes to the Round 3 rules, which are to become effective on June 2, 2008.
2. The Round 3 rules have been developed in three phases. Round 3A rules, which the Appellate Division set aside in January 2007, have been supplemented by a Round 3B rule proposal published in the NJ Register in January, 2008, and which have been subsequently supplemented last week with additional revisions that COAH developed in response to comments received on the Round 3b rule proposal. The net effect of these changes is that the Township's affordable housing obligation assigned by COAH has increased considerably from the Round 3A rules.
3. The Township is required to re-petition COAH for substantive certification on or before December 31, 2008.
4. The following table identifies the change in COAH's growth projections for the Township, and compares the changes between the initial January 2008 Round 3B Growth Projections and the May 6 Round 3C growth projection proposal. The Round 3C proposal is the planning target for the municipal fair share plan.

Round 3 Growth Share

Housing Units			Jobs #			Growth Share		
3B	3C	Change	3B	3C	Change	3B	3C	Change
269	284	+15	75	128	+53	58.48	64.8	+6

Residential Growth Share: 284 / 5 (one unit among 5) = 56.8 affordable units
 Non-residential Growth Share: 128 / 16 jobs per unit = 8 affordable units
 64.8 units - total Growth Share

5. COAH’s Round 3B & C rules have extended the third round from ten-years (2004-2014), to fifteen years (2004-2018). In considering COAH’s residential growth projection for the Township, we have reviewed certificates of occupancy issued for 2000 – 2006, which are listed below.

i. 2002 – 2006 residential certificates of occupancy as per State of NJ:

- 2000: 22
- 2001: 31
- 2002: 31
- 2003: 24
- 2004: 22
- 2005: 8
- 2006: 15

153 for 7 years (21.8 / year) vs.
 COAH’s projection of 284 for 2004 – 2018 (18.9 / year) for 15 years.

Unfortunately, it appears that the Township is not in a good position to argue that COAH’s Round 3C projections are unreasonable based upon the residential growth trend identified above. While it could be argued that the recent changes in zoning that increased the minimum lot size requirement could be expected to slow the pace of residential development, there does not appear to be a basis for advancing this argument.

6. The Township’s re-petition for Round 3 has to address (1) the prior round unmet need, (2) Round 3 rehabilitation obligation; and (3) Round 3 Growth Share Obligation.

- Kingwood’s prior round obligation has been reduced from 20 units to 19 units;
- Kingwood received a rehabilitation obligation of 11 units;
- Growth Share obligation is 65 units.

7. It is important to keep in mind that the Township’s re-petition for Round 3 has to establish a plan for the full Round 3 Growth Share projected by COAH. If the Township does not grow as projected, the municipality is responsible for only the growth share associated with the actual growth that occurs between 2004 and 2018, as measured by certificates of occupancy issued during that time period.

8. There are provisions in COAH’s rules, which enable a municipality to reduce its obligation based upon a lack of sufficient vacant land. If the Township were to pursue this option and document that there is not sufficient land to accommodate the level of growth projected, COAH’s rules require the municipality to endorse wastewater management plan amendments if a landowner were to make application for DEP to provide the necessary water and sewer infrastructure to accommodate the growth share (or a portion thereof). This would result in the potential for high-density development to occur in an unplanned manner,

without regard as to location. A couple of provisions that may make this an unattractive option are found in the rule and listed below.

5:97-5.6 Adjustment of household and employment growth projections

(e) 4. Land in existing or proposed sewer service areas outside of Planning Areas 1 or 2 shall have a minimum presumptive density of four units per acre for residential sites and 40 jobs per acre for non-residential sites; and . . .

5:97-5.4 Durational adjustment

(g) The Council shall require the site(s) to be zoned for inclusionary development **pursuant to N.J.A.C. 5:97-6.4**, or, if the site(s) had already been zoned for inclusionary development, the Council shall require the continuation of that zoning.

(h) The lack of adequate capacity, in and of itself, shall constitute a durational adjustment of the prior round obligation. The requirement to address the portion of the prior round obligation with such site(s) shall be deferred until adequate water and/or sewer are made available. **The requirement to plan for the projected growth share obligation pursuant to N.J.A.C. 5:97-1.1(c) shall be addressed by zoning the site pursuant to (g) above.** In order to provide water and/or sewer on sites the Council determines are realistic for inclusionary development, municipalities shall adhere to the following:

1. Notwithstanding the lack of adequate water and/or sewer at the time a municipality petitions for substantive certification, the municipality shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low- and moderate-income housing, on a priority basis.
2. Municipalities shall endorse all applications to the DEP or its agent to provide water and/or sewer capacity. Such endorsements shall be simultaneously submitted to the Council.
3. Where the DEP or its designated agent approves a proposal to provide infrastructure to a site for the development of low- and moderate-income housing identified in the Fair Share Plan, the municipality shall permit such development; and
4. Where a municipality has designated site(s) for low- and moderate-income housing that lack adequate water and/or sewer and where the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low- and moderate-income housing in the Fair Share Plan, the municipality shall amend its Housing Element and Fair Share Plan and applicable zoning ordinances to permit development of such site for low- and moderate-income housing. The amended Housing Element and Fair Share Plan and zoning ordinances shall be submitted to the Council within 90 days of the site's approval by the DEP or its agent. The Council may waive these requirements when it determines that the municipality has a plan that will provide water and/or sewer to sufficient sites to address the prior round **or projected growth share** obligation within the substantive certification period.

9. Another provision in the rule, which the Planning Board should be aware of is the requirement that requires permitted densities automatically increase to accommodate affordable housing development, as follows:

5:97-6.4 Zoning for inclusionary development

(b) 2. iv. Inclusionary zoning outside of a sewer service area in Planning Areas 3, 4 and 5 shall permit a presumptive density increase of 40 percent over the existing zoning. The presumptive maximum affordable housing set-aside shall be 20 percent of the total number of units in the development; and . . .

It appears that this provision would have the effect of increasing the Township's permitted density from one dwelling unit per seven acres to one dwelling unit per 4.2 acres of land. We will be clarifying the impact of this regulation in subsequent correspondence to the Board.

10. The purpose behind providing these regulations is to call the Board's attention to choices that will have to be made in the near future concerning how to plan for affordable housing. In the past, the Township's fair share plan included 100% municipally sponsored projects and a group home, which together addressed the prior round (1987-1999) obligation. If this approach is to be changed in the Round 3 re-petition, then alternative mechanisms will be needed, which could involve planned development in a location of the municipality's choosing.
11. One suggestion that has been raised is the potential for designating a hamlet, or an expansion of an existing village, where wastewater planning could be tied into correcting existing septic system failures, such as Baptistown, with a new mixed use development. Such a planning effort could be a somewhat ambitious and time-consuming undertaking. Planning for a hamlet or village could be guided by a community visioning process.
12. The Office of Smart Growth has published guidelines for community visioning that are consistent with local master plan endorsement with the State Development and Redevelopment Plan (SDRP). These guidelines are provided for the Board's review and discussion of this potential option. (see attachment)
13. One reason that it would make sense to establish an SDRP designated hamlet or village (Center) is that State permitting agencies will provide needed technical assistance to the Township, as well as permits, to establish the necessary infrastructure to support the center and the affordable component included in the Center. This may be an attractive alternative to allowing the development community to determine the location and intensity of development in conjunction with providing the Township's fair share.

J. Mathieu left the meeting at 10:50 PM.

D. Banisch stated the Township has to plan for the whole obligation now. If the Township does not grow, it does not have to provide the housing in the plan. If the Township gets more than 10% behind the plan, they have to adjust their plan. Substantive certification protects the Township from a builder's remedy and a zoning challenge. He thinks the Township should get started with community visioning standards, along with some preliminary mapping and parameters.

Habitat for Humanity

D. Haywood stated she had seen something in the newspaper. E. Niemann stated the project is being considered for the Ukarish site. E. Niemann stated the Ukarish site is not significant enough to put a dent in the Township's requirements but it is better than "0". E. Niemann further stated the Township might consider creating a hamlet or town center, possibly in Baptistown. E. Niemann stated no property has been designated.

J. Mathieu returned to the meeting at 10:54 PM.

D. Banisch commented a partnership, with a for-profit or non-profit developer, is a good way to go. The Township provides the developer with the zoning. Affordable housing income requirements are 80% or less of the median income for the region for the household size. There are three tiers of income, moderate income, low income and very low income. For very low income, COAH allows a 2 for 1 credit. RCA contributions are

about \$67,000 per unit and can be no more than 50% of your obligation. In the contact he has with other municipalities, they have been requesting more than the minimum contribution. RCA contributions are always subject to negotiations. 25% of your housing can be age restricted and 25% rental family housing.

J. Mathieu stated Camden, one of the poorest cities in America, did not want to accept RCA contributions any more. The reason was that it was an insult to the people by indicating suburban people are paying to have people stay in the cities. Philadelphia has 38,000 abandoned housing units. They had the same amount in 1974. In a generation they have done nothing.

D. Banisch stated the Environmental Infrastructure Trust Fund is the most common source of funding for wastewater treatment facilities.

Submission of Applications

It was moved by S. McNicol, seconded by D. Haywood and carried to require the submission of an application to the Planning Board at least 15 days prior to the meeting. All members voted **AYE** on **ROLL CALL VOTE**.

Design Standards

The matter will be addressed at the next meeting. Board secretary will provide copies of the original memo from the Design Standards Committee.

ADJOURNMENT

It was moved by R. Dodds, seconded by D. Haywood and carried to adjourn the meeting at 11:11 PM. All members voted **AYE**.

Respectfully submitted,

Diane Laudenschick

Diane Laudenschick, Secretary