

MINUTES

PRESENT:

- M. Augustine
- R. Dodds
- D. Haywood
- T. Kratzer
- J. Mathieu (8:50 PM)
- S. McNicol
- E. Niemann
- L. Senus
- J. Strasser
- M. Syrnick, Alt #1
- D. Posey, Alt #2
- T. Decker, Engineer
- D. Pierce, Attorney
- D. Banisch, Planner
- A. Clerico, Planner

ABSENT:

CALL TO ORDER

The meeting was called to order by R. Dodds at 8:01 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

Laura Properties – Block 8, Lots 25.01, 25.14 & 25.15 – Extension of Time to File

L. Tubman of Archer and Greiner was present for the request this evening. The reason the applicant is seeking an additional extension of time is due to the difficulties they are having with the Hunterdon County engineering department. The applicant has received conditional approval from the Hunterdon County Planning Board. Two of the conditions are to provide an engineer’s estimate and post a performance bond. T. Decker responded the Township would have no objection in accepting the performance guarantee. It is the Township’s responsibility to inspect the installation of the stormwater management system. D. Pierce requested the performance bond be posted prior to the expiration of the current requested extension of time.

It was moved by D. Haywood, seconded by L. Senus and carried to amend the approval by having the applicant post the performance bond for the stormwater management system with Kingwood Township prior to the release of the deeds and grant a 90 day extension of time to file. All members present voted **AYE** on **ROLL CALL VOTE**.

Perrotti – Block 7, Lot 14.10 – Extension of Time to File

D. Pierce stated there is no representation for this matter present this evening. The request was as a result of one of the deeds not being signed by the Board.

It was moved by D. Haywood, seconded by J. Strasser and carried to grant a 45 day extension of time to file the deeds. All members present voted **AYE** on **ROLL CALL VOTE**.

Minutes of May 13, 2008

It was moved by D. Haywood, seconded by L. Senus and carried to approve the minutes of May 13, 2008 and place on file. All members present voted **AYE** on **ROLL CALL VOTE**, except T. Kratzer, J. Strasser and M. Syrnick, who **ABSTAINED**.

**BDAC, LLC – Block 23, Lot 17.02 – Barbertown Point Breeze Rd – Class II Minor Subdivision -
Public Hearing**

L. Tubman, attorney, R. Lorentz, engineer and A. Belle, principle in BDAC LLC, were present for the matter this evening.

T. Decker stated the Township has received revised plans and the additional documentation satisfying those items that were not waived for completeness at the May 13, 2008 meeting. He recommends the matter be deemed complete.

D. Pierce stated the matter was deemed conditionally complete on May 13, 2008. It is an administrative function to make sure those items have been provided. He has reviewed the affidavit of service and notice and the provisions of the MLUL and Township ordinance have been met. The Board may open the hearing.

L. Tubman stated the applicant is proposing a Class II Minor Subdivision comprising of three lots. The Board, at the May 13, 2008, meeting had some suggestions for adjusting the lots and preserving the two hedgerows that divide the property.

D. Pierce swore in R. Lorentz.

R. Lorentz described his current position and past relationship with the Board. He stated A. Belle has retained his firm, Heritage Consulting Engineers, to prepare the application. It is based on original surveying work done by S. Norkevich from a prior subdivision. His firm has done field surveying to ascertain the conditions currently located on the property. His prior career had been spent in municipal engineering until 2007. He was the Township's engineer for 29 years. The latest revision date is May 22, 2008. The frontage on the southern end of the property is Barbertown Point Breeze Road. The Lockatong Creek runs from north to south. The

applicant is proposing three lots, two of which are stacked flag lots. The rear most lot, 17.02, is comprised of approximately 17.6 acres with 17.2 net of the road ROW. Lot 17.04 is comprised of 3.62 acres net of ROW. The front lot, 17.05, is a Class I lot, comprised of 2.79 acres net of ROW. Lots 17.02 and 17.05 are both compliant with all zoning regulations, including the application of the minimum buildable area calculations for each lot. The extension of the normal table allowing that calculation is shown on the plat. Lot 17.04 has been maximized to conform to the environmental restrictions and the Board's suggestion to place the lot lines in the existing tree rows. The flag lot, requiring the 4 acre buildable area, does not comply because of the placement within the hedgerows and tightness of the environmental features. There is no gain in the area with the moving of the line to the east because that area is all environmentally constrained land. He believes the plan is entirely workable and can be put into place and provide a proper environment for housing as well as preserving the environmental areas. The plat being referred to this evening was marked "Exhibit A-1" dated June 10, 2008. The second lot does not benefit from being enlarged due to any enlargement will increase the area of the environmentally constrained areas. The building circles are not shown on the plat. The front lot does not require a buildable circle. The ordinance does not require the house to be positioned in the building circle.

T. Decker stated the ordinance requires the circle be inscribed within the building envelope and the building envelope is bound by the zoning set back lines, excluding the environmentally sensitive areas.

D. Banisch stated the calculations that are provided in the plan may not have taken into the count the 300' riparian zone. The relief the applicant is applying for may be different than on the plan. It is not clear to him, if on Lots 17.04 and 17.05, the riparian zone is included in the indicated acreage. R. Lorentz stated it is the intent to include the acreage. He took the calculations and included them on the plan. He reviewed the table provided on the plan. D. Banisch inquired if the net site in the constrained area indicated on the table complies with the ordinance requirements? R. Lorentz responded "yes".

T. Decker's memo was reviewed:

Completeness Review

Our office has reviewed the above submitted documents for completeness pursuant to our letter of May 7, 2008 completeness hearing of May 13, 2008 and offer the following comments:

Item #3 – Plans for Improvements

Waiver for completeness at May 13, 2008 meeting.

Item #10 – Property Owners' Telephone Numbers

Provided.

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

Provided.

Item #15 – Certified by the Municipal Tax Assessor

Provided.

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

Provided.

Item #21 – Contours and Topography within 200 Feet

Waiver for completeness at May 13, 2008 meeting.

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

Waiver for completeness at May 13, 2008 meeting.

Item #26 – Lot Grading Plans

Provided.

Item #27 – Location of Natural Features to be Preserved

Waiver for completeness at May 13, 2008 meeting.

Item #29 – Soil Erosion and Sediment Control Plan

Waiver for completeness at May 13, 2008 meeting.

Item #30 – Stormwater Calculations

Provided.

Item #34 – Delaware & Raritan Canal Certification

Provided.

Item #38 – Stormwater Management Plan and Supporting Calculations

Provided.

Item #42 – Right to Farm Language on Deeds

Provided.

Item #43 – Hydrogeological Report and Pump Testing

Not applicable.

Item #45 – Affordable Housing Plan

Waiver for completeness at May 13, 2008 meeting.

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

Provided.

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

Provided.

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

Provided.

We find the application has adequately satisfied terms of the May 13, 2008 Conditional Completeness determination and recommend the application be deemed complete.

Technical Review

Subject property is located on Barbertown–Point Breeze Road and referred to as Block 23, lot 17.02 on Kingwood Tax Map Sheet #10. The property is located within the AR-2 Agricultural and Residential District and bound by Barbertown-Point Breeze Road to the south, the Lockatong Creek to the east and adjacent farmland to the north and west. Property was subject of a previously approved minor subdivision as memorialized by Resolution #2006-33, adopted October 10, 2006.

Application proposes the subdivision of existing Block 23, Lot 17.02 into two new lots and one remaining in accordance with the Class II Minor Subdivision provision of the Kingwood Township Ordinance. Lots 17.02 and 17.04 are flag lots, each fronting on Barbertown-Point Breeze Road via 25 foot stem and common driveway. Lot 17.05 will front directly on Barbertown-Point Breeze Road with access through the proposed common driveway.

Upon review, we offer the following technical comments at this time.

1. As discussed at the May 13, 2008 Board meeting, the applicant has adjusted the proposed property lines to coincide with the existing tree rows and preserved the trees within conservation easements. The adjustment results in a net area of 3.354 acres for Lot 17.04. This requires a variance as a minimum net lot area of 4 acres is required for a flag lot.
2. Ordinance §115-3 under the definition of Class II Subdivision states that that the owner of a lot having access over the first 50 feet of a flag stem does not ordinarily share in the maintenance obligations of the common driveway. Given the proximity of the proposed septic disposal field on Lot 17.05 and minimum 75 foot setback from Barbertown-Point Breeze Road, our office recommends that Lot 17.05 be permitted to access the common driveway at a distance greater than 50 feet and share in the maintenance responsibilities.

R. Lorentz responded the ordinance requires the first 50' of the common driveway from the ROW to a point 50' in to be paved to a specification. He is requesting that access to the first lot be allowed further than 50' on the common driveway since it will be closer to the building spot of the property and creating less overall disturbance on the tract. T. Decker stated with the extension of the access for the front lot, the owners of that lot should share in the maintenance of the common drive.

3. In accordance with §115-3 under the definition of Class II Subdivision B.(4)(a), lots that are less than four acres in size shall be deed restricted to limit the dwelling size to not more than 3,000 sf. This provision applies to Lots 17.04 and 17.05 as both are less than 4 acres in size. Deeds and plans should be noted accordingly.

L. Tubman requested the Board grant relief since the configuration of the lots are at the Board's recommendation.

4. Lot setback lines should terminate at the 300' Stream Buffer and or wetland buffer whichever is more restrictive.

R. Lorentz stated the plat will be revised to indicate the setback line terminating at the 300' stream buffer.

5. Applicant's engineer has indicated that the existing gravel lane complies with the Kingwood Township ordinance for common driveways serving a Class II Minor Subdivision and should be suitable for the proposed subdivision. The following should be documented regarding the driveway construction.

- a. Copy of a Driveway Permit in accordance with §112-8A of the Kingwood Township Ordinance.
- b. Minimum constructed driveway width.
- c. Minimum constructed thickness and material.
- d. Minimum constructed thickness and material.

In response to the above comments, R. Lorentz stated he can provide a copy of the driveway permit issued in 2006 by Kingwood Township. On March 22, 2006 there was a Hunterdon County Soil Conservation District certification for the driveway since it was of considerable size. The drive is more than 10' wide for most of its length and meets the standard. The material is solid stone but he is unaware of the depth. There doesn't seem to be any specification for the construction of a Class II driveway. T. Decker Section 112-7 of the Driveway Ordinance indicates the appropriate thickness for a Class II driveway. R. Lorentz stated if it is not currently up to the requirements, it will be improved to those requirements.

4. In accordance with §112-8A, the common driveway is to be paved for a minimum distance of 50 feet from the roadway and a paved apron installed.
5. In his June 3, 2008 letter and accompanying calculations, the applicant's engineer indicates that the anticipated impervious improvements for the three proposed lots total approximately 10,500 sf (0.241 ac) and therefore do not exceed the thresholds triggering the Township and State Stormwater Management regulations.

Based on an email exchange and phone conversation with Sandy Blick, Program Coordinator NJDEP Division of Watershed Management on June 6, 2008, it is our office's opinion that the threshold has been met. As presented during the completeness hearing, the existing 20,000 sf driveway and equipment parking area was installed after adoption of the NJDEP Stormwater Management Regulations on February 4, 2004. This existing area therefore counts toward the net increase in impervious area. However since the driveway existed prior to this application, the applicant is only responsible for treatment of the additional impervious area created by the proposed individual lot improvements.

The applicant's engineer should address the methods of stormwater management that will be implemented.

R. Lorentz stated he has reviewed the stormwater management issues with T. Decker and has been in contact with the DEP. The result of the conservation was while the existing driveway was constructed in 2006 and is permitted in the sense that it did not require stormwater management review when it was constructed, it was constructed post 2004 and is considered in the overall picture of the site. The DEP regulations preceded Kingwood's ordinance by several months. The applicant will need to address the increases. He has presented some computations to T. Decker to demonstrate that these lots will remain below the technical threshold of .25 of an acre of new imperviousness. The total of the project has risen to something in excess of the .25 of an acre and the applicant will provide the stormwater management on an individual lot basis. For each 1,000 sq ft of house roof, the applicant would provide 250 cu. ft. of drywell or stormwater storage on that individual lot. For the given square footage of the new driveway, a detention infiltration swale would be provided to offer compensation for that feature. The combinations of the features would accomplish the whole picture on the lot and match the onsite conditions as they are constructed.

T. Decker stated he concurs with R. Lorentz's interpretation of the DEP requirements. The applicant is not required to provide treatment for the existing driveway but the creation of any houses or driveways would be in excess of the allowable .25 of an acre and would need to be treated. An option would be to

deed restrict each lot to limit the amount of impervious coverage. R. Lorentz has configured a design that can be adapted to the size of the house, driveway and sidewalk and translated to storage for the lot. The Township does not have a requirement for an individual stormwater management review. R. Lorentz would have to configure a calculation of how the system would be expanded for the development on the lot. The building department would be aware of the requirement to install a drywell.

J. Mathieu entered the meeting at 8:50 PM.

R. Lorentz stated in response to the relief being sought for the middle lot in regard to the size of the dwelling, the septic system can be located as close as 10' to the property line. The permeability testing is 20' off of the proposed easement line. Septic systems do not constitute impervious area. The house, with a 2000' sq ft foot print and two stories, approximately 40'x50', including garage, would create a 3000 sq ft house. The house could be placed in the corner. There would be approximately 100' to 150' of depth from the set back to the nearest constraint, which is the buffer. The item likely to be used on the house itself would be dry wells at each corner of the house accepting the roof leaders. The volume will vary with the soil conditions that are encountered. The system might be proposed to provide 250 cu ft of storage for each 1000' sq ft of roof. It could be accommodated in two average size drywells.

6. The Board should discuss the limits of the wetland buffer and 300' wide Stream Corridor with respect to the need for conservation easements and field demarcation. At a minimum these areas should be delineated with a metes and bounds for inclusion in the deeds with reference to the appropriate NJDEP regulations.
7. Applicant has provided a copy of a letter from the Delaware Raritan Canal Commission dated August 23, 2006 for the previous subdivision. The letter contains specific language stating that any cumulative increase in impervious area since 1980 will necessitate a full review by the DRCC. Applicant should submit the current application to DRCC.
8. The Board should discuss the limits of the wetland buffer and 300' wide Stream Corridor with respect to the need for conservation easements and field demarcation. At a minimum these areas should be delineated with a metes and bounds for inclusion in the deeds with reference to the appropriate NJDEP regulations.

R. Lorentz stated the applicant is accepting the above restrictions.

L. Tubman stated the applicant is willing to accept and place conservation easements but retain the right to apply to DEP for relief that is available. The applicant accepts the conservation easement, however, the DEP allows for some relief within the first 150'. There are general permits available under the Freshwater Wetlands Protection Act. The applicant would like to be able, if the DEP allows, to apply for those permits. The conservation areas will be delineated with a metes and bounds with the right to go to the DEP for relief.

9. Applicant has provided a copy of a letter from the Delaware Raritan Canal Commission dated August 23, 2006 for the previous subdivision. The letter contains specific language stating that any cumulative increase in impervious area since 1980 will necessitate a full review by the DRCC. Applicant should submit the current application to DRCC.

L. Tubman stated the above is an observation.

Administrative

1. Subject to unconditional approvals of the following agencies as may be appropriate:

- a. New Jersey Department of Environmental Protection
 - b. Hunterdon County Planning Board
 - c. Delaware & Raritan Canal Commission
 - d. Hunterdon County Soil Conservation District
 - e. Any other agency having regulatory jurisdiction.
2. Application may be subject to off-tract improvement contributions to be agreed upon with the Township Committee.

T. Decker stated a question has come up with regard to the transition areas associated with the wetlands. The plat indicates the transition area measures 50'. R. Lorentz stated the transition area came specifically in the LOI.

L. Tubman stated the New Jersey Conservation and Hunterdon Land Trust are possibly interested in acquiring a portion of the stream corridor for public use. Would the Board be satisfied by the constraints of the DEP requirements for wetlands buffers and C-1 streams and not encumber the area with a conservation easement what a conservation entity would acquire for public purposes? The conservation easements on the front two lots would not be a problem. On the rear lot, the transition areas and C-1 stream boundaries are regulated by the DEP and the applicant is requesting no additional restrictions be placed on those areas. The area would have much less value if an easement was placed on it.

D. Pierce stated the purpose of the conservation easement the Board has been requiring is to basically alert the subsequent property owner to the restrictions on the property as required by DEP regulations. The Board can grant out an exception that any relief allowed by the DEP by a general permit is permissible. The conservation easements the Township has been working on prohibit all activity in those areas. The Township has not proposed any language that provides for exceptions that can be granted by the DEP. The Board felt there should be some visible indication of the easements.

L. Tubman stated a conservation easement may prevent a conservation group from creating a greenway. She agreed the areas should be marked. Once conservation easements are placed on a property it is very difficult to have them removed. If no conservation organization is interested in the property, there will be a notice in the deed and markers on the ground indicating the areas are subject to DEP regulations. The owners of the property would have to go to the DEP and request permits for what they want to do in the regulated areas. There are no set buffers for them. If this was an exceptional value wetlands, the buffer would be 75' of the stream and intermediate value wetlands no closer than 25' from the stream. The general permit is only for trails on public lands through ownership by a conservation group for public access.

R. Lorentz stated very little of the wetlands are on the front two lots. The lot lines fall short of going into the wetlands or any further. It is his understanding the primary area that would be used for some sort of conservation or acquisition would be along the stream corridor and wholly on Lot 17.02.

D. Banisch's memo was reviewed:

1. The applicant has aligned the rear lot line of proposed Lot 17.05 to be collinear with the existing hedgerows on Lots 17.05 and 17.04 as recommended in our prior report. The plans show that the hedgerow is to be included in a conservation easement to protect this physical feature of the site.

L. Tubman stated the above comment is an observation. The application has no lot boundaries collinear with the hedgerow.

2. Revised plans now show that the 300' Category One stream buffer area is measured from the top of the bank as opposed to the measurement of the centerline of the stream as previously shown on the plans. This revision is consistent with the requirements for a 300' Category One stream buffer pursuant to N.J.A.C. 7:8-5.5(h)1i.

L. Tubman stated the above has been completed.

3. Section 132-30F(6) requires a minimum buildable area of one acre. The applicant revised lot lines as previously recommended within the existing hedgerow, which results in buildable areas deficiencies for proposed Lot 17.04 and 17.05. Variances are required from Section 132-30F(6) for Proposed Lot 17.04 with a buildable area of 0.908 acres and Proposed Lot 17.05 with a buildable area of 0.687 acres. From a planning perspective, the revised lot layout appears to be a better arrangement that protects and retains the hedgerows and natural features of the site without severely compromising the utility of the proposed lots.

L. Tubman stated the above has been adequately addressed.

4. Section 132-30F(3) requires that a "flag lot" have at least four acres beyond the access strip, after taking into account the partial credit allowed for constrained areas, and the minimum buildable area requirements, in the main buildable portion of the lot to the rear of the access strip. Proposed Lot 17.04 requires a variance from this standard. Plans show the lot consisting of 2.291 acres after partial credit for ROWs and constrained areas. Applicant should identify the area of the lot included in the 300' wide stream corridor. The MAXIMUM TRACT YIELD CALCULATION FORM should be revised to correctly show the net site area after subtracting the 300' stream corridor.

L. Tubman stated the above has been addressed.

5. The revised plans address our prior comment regarding proposed Lot 17.05 in accordance with the definition of 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...". After the lot line adjustment, proposed Lot 17.05 appears to satisfy this requirement at 2.122 acres after partial credit for constrained areas.

L. Tubman stated the above is an observation.

6. This subdivision will result in the creation of three (3) new residential dwellings, which generates 0.75 units of affordable housing obligation. It appears as though proposed Lot 17.02 (17.610 acres) is large enough to accommodate an affordable dwelling unit in addition to the single-family residential dwelling which, presumably, is proposed. The applicant has requested a final determination on the method of addressing this obligation. The applicant and the Board should discuss construction on affordable unit on proposed lot 17.02. The timing as to when the affordable unit is to be constructed should be discussed as well (i.e. construct unit within 30 months of receiving the Certificate of Occupancy for the first dwelling unit).

L. Tubman stated the above indicates the application creates a 3/4 COAH requirement and suggests Lot 17.02 is large enough to accommodate a COAH unit. In the COAH ordinances, an accessory apartment could be permitted, attached to a barn or garage. It would be a rental unit and provide at least one credit. The applicant is agreeable but would like to know when the construction of the unit would be required. The applicant is suggesting the unit be provided within thirty months of receiving the Certificate of Occupancy on the first unit on that particular lot.

R. Dodds inquired if the first two lots are sold and the third lot becomes an open space area, will the unit still be provided? D. Banisch responded the Township would not get the unit. L. Tubman responded the agreement would be for access only.

7. The Board should condition approval upon approval by any other agency with jurisdiction.

A. Belle was sworn in by D. Pierce.

A. Belled testified he is intending to either build on the center or rear lot. He testified he had worked for the Township's IT department and has been a resident of Kingwood Township for the last 10 plus years. He is an authorized agent for BDAC and a trustee for the property.

D. Banisch stated he is concerned about the timing of the construction of the unit. A condition could be that would require construction within 30 month of the Certificate of Occupancy on Lot 17.02 or it could be before the second Certificate of Occupancy for one of the other lots. An example would be if Lot 17.02 gets built and Lot 17.04 is sold, the unit has to be created before the house is built on Lot 17.04.

D. Pierce stated the requirement is tied to the construction of the principle unit on Lot 17.02, if it is to be considered an accessory structure. It will have a 30 year restriction.

In response to an inquiry by a Board member, T. Decker stated the pit bail results are indicated on the plan. The COAH unit can either have its own septic system or tie into the system for the house. Any system utilizing 2,000 gallons or less per day does not require state approval.

R. Dodds requested comments from the public. No response was heard.

In regard to the conservation easement markers, T. Decker stated he is suggesting the 300' buffer follow the stream collinear and be described in metes and bounds. There should be a monument posted where there is a deflection in the easement, tree rows and/or crosses the property line. One should be placed at the intersection of the conservation easement for the tree row and another one along the line of the tree row, spaced at approximately every 100'. R. Dodds stated the conservation easements need to be delineated prior to the start

of construction. T. Decker stated the stormwater management plan design is part of the subdivision approval. The design standards are in the stormwater management plan and can be customized for the development.

R. Lorentz stated the building area on Lot 17.05 is at .687, which is 51% of the normal envelope and the applicant believes it complies with the ordinance requirements. D. Banisch stated the ordinance requires a 1 acre requirement. D. Pierce reviewed the definition of a buildable area in Chapters 115 and 132. Since there is an apparent conflict in the ordinances, the Board should grant a variance to be on the safe side.

It was moved by J. Strasser, seconded by S. McNicol and carried to approve the above application with the following conditions:

1. Lot 17.02 shall be deed restricted against further subdivision;
2. Lot 17.05 shall be permitted to access the common driveway at any location along the common driveway and shall share in the maintenance responsibilities for the common driveway;
3. Lot 17.05 shall be deed restricted to prohibit the construction of a dwelling larger than 3000 square feet of floor area;
4. Submission of a Plat revised as follows
 - A. Setback lines that terminate at the most restrictive of the category one stream buffer or the freshwater wetlands buffer;
 - B. To include the restriction prohibiting the construction of a dwelling larger than 3000 square feet of floor area on Lot 17.05;
5. Submission of a copy of the driveway opening permit for the existing Lot 17.02;
6. Submission of documentation satisfactory to the Board engineer demonstrating the appropriate construction material and thickness of the existing driveway for use as a common driveway;
7. Submission of the Soil Conservation and Sediment Control permit/approval for the prior installation of the existing driveway;
8. Installation of a paved apron and paving of the first 50 feet of the existing driveway prior to the issuance of a Certificate of Occupancy for any of the lots;
9. Submission to and approval by the Board engineer of a formula for calculating and determining the stormwater treatment system to be installed on each lot prior to the issuance of a building permit for each lot;
10. Submission of this application to the D&R Canal Commission;
11. The applicant shall confer with the Township Committee and the Board engineer and agree upon the amount of the applicant's off-tract improvement contribution;
12. Review and approval by the Board's professionals, and recordation, of:
 - A. Deed restrictions for each lot with respect to the requirement to:
 - i) install individual stormwater management systems and regarding the operation and maintenance of same;
 - ii) install and maintain markers delineating the conservation and hedgerow preservation easements
 - B. A common driveway access and maintenance agreement;
 - C. Conservation easements for Lots 17.04 and 17.05 noting and subject to the right to apply to the New Jersey Department of Environmental Protection for permits to conduct activities within the area of the conservation easement;
 - D. Revisions to the Deed for Lot 17.02 providing notice of the existence of freshwater wetlands and a category one stream buffer and the existence of

restrictions imposed by the New Jersey Department of Environmental Protection regarding the activities that may take place therein;

E. Hedgerow preservation easements;

13. All conservation and hedgerow preservation easements shall be delineated in the field prior to the issuance of any building permit by the installation of markers at all deflection points along the outer boundary lines of such areas and where such lines intersect property lines. Where the distance between deflection points and/or the intersection with property lines is greater than 100 feet, markers shall be installed every 100 feet. The form of marker shall be subject to approval by the Board's planner;
14. Prior to the issuance of a building permit, the applicant shall submit a baseline documentation report for all conservation and hedgerow easements documenting with photographs the installation of the boundary markers and the condition of the easement areas;
15. Submission of a copy of the map referenced in the Freshwater Wetlands Letter of Interpretation issued by the New Jersey Department of Environmental Protection;
16. Completion and submission of the results of aquifer testing, the plan for which and the results of which shall be subject to the approval of the Board's hydrogeologist prior to the issuance of a building permit.
17. No building/construction permit shall be issued for any lot unless and until a well permit has been obtained as required by Kingwood Township Ordinance Section 153-24.
18. Prior to the issuance of a certificate of occupancy, water quality testing shall be conducted on the well for each lot as required by Kingwood Township Ordinance Section 153-25. The test results shall be submitted to the Township's hydrogeologist for review and determination as to whether a water treatment system is necessary.
19. Receipt of unconditional approval from the Hunterdon County Planning Board.
20. Receipt of unconditional approval from the Hunterdon County Soil Conservation District.
21. Receipt of unconditional approval from the D&R Canal Commission.
22. The Township of Kingwood is dedicated to providing affordable housing and has established an affordable housing program with supporting land use ordinances and a housing trust fund based on the Fair Housing Act of 1998. The growth share ordinance requires a developer to agree upon a plan for satisfying its portion of the growth share obligation created as a result of its proposed development. Pursuant to the growth share ordinance, each new home results in the creation of an obligation for 1/4th of a growth share affordable housing unit. Since the proposed development results in the creation of 3 new homes, the applicant is responsible for satisfying an obligation to provide a 3/4ths share of a growth share affordable housing unit. The applicant has agreed to provide an affordable housing rental unit on Lot 17.02 that will be deed restricted for affordable housing for thirty (30) years. The affordable housing rental unit shall be constructed and a certificate of occupancy issued therefore not later than thirty (30) months after the issuance of a certificate of occupancy for the primary dwelling unit on Lot 17.02.
23. Revision of the Deed for Lot 17.02 to contain appropriate notice and restrictions regarding the affordable housing obligation set forth in condition number 21.
24. The applicant shall establish an escrow for professional review of the aquifer test plan and hydrogeologic report as required pursuant to Kingwood Township Ordinance Section 153-34 (4). The escrow in the amount of \$4,800.00 shall be established before deeds are released for recording.

25. The applicant shall establish an escrow for well rehabilitation and monitoring as required pursuant to Kingwood Township Ordinance Section 153-34 (5)(a). The escrow in the amount of \$9,000.00 shall be established before deeds are released for recording.
26. The applicant shall establish an escrow for water quality monitoring as required pursuant to Kingwood Township Ordinance Section 153-34 (5)(b). The escrow in the amount of \$8,400.00 shall be established before deeds are released for recording.
27. Neither the Board nor its employees or professionals will perform any service in furtherance of this approval if there is a deficiency in any escrow or inspection fee account. The applicant shall be under a continuing duty to maintain a positive balance in all accounts until all conditions have been satisfied and all charges have been paid. Approved Plats or Deeds shall not be released for recordation unless all outstanding escrow fees have been paid and the applicant's escrow account contains sufficient funds to cover anticipated unbilled expenses.
28. The within approval and the use of all property subject to the within approval are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all Municipal, County, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency(ies) between the terms and/or condition of the within approval and any approval(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon proper application.
29. The Township of Kingwood Planning Board reserves the right to revoke and withdraw any approval hereby granted in the event that there is any deviation from or alterations of the plan hereby approved, unless prior written approval for any such deviation or alteration has been obtained from the Planning Board. Minor deviations and field changes may be authorized in writing by the Township Engineer.
30. All improvements shall conform to building standards and other regulations as set forth in Federal, State, County and Municipal Statutes, Regulations, Codes and Ordinances, at the time of installation of the said improvement.
31. The acceptance by the applicant of this approval and reliance thereon by the applicant for the purpose of commencement of construction of improvements within the project in accordance with the approval, shall operate as an acknowledgment and agreement by the applicant, its successors and assigns, that it accepts the official action herewith memorialized as being subject to the terms and conditions as contained herein, and agrees to fully comply and be bound thereby.

All members present voted **AYE** on **ROLL CALL VOTE**, except J. Mathieu, who abstained.

From this point forward, the meeting was chaired by J. Mathieu.

Cacciabauda – Block 37, Lots 3.05 and 3.06 – Federal Twist Road – Conceptual

B. Szaferman was present to represent the applicant. The purpose this evening is to discuss the consolidation of an existing five lot subdivision into a two lot subdivision. His client purchased this property after it was

approved by the Planning Board and the five lots were created by the subdivision deeds signed by the Planning Board. The conditions of approval were not met by the prior owner. He has now received the stream encroachment permit and general permit #10. In order to comply with the stream encroachment permit, the applicant has reduced the existing five lot subdivision into a two lot subdivision. The applicant believes he has addressed the major deficiencies that had existed. The applicant has not been able to determine approval by the D & R Canal Commission. He intends to apply for that approval. The applicant feels with addressing those issues, this application becomes an amendment to the prior approval. He would like to obtain the approval of the Board before proceeding with the application. The County had deemed the application as a major subdivision and did not allow the swale and retention basin to serve as stormwater management. The matter was the subject of litigation, which has been resolved. The applicant is requesting the matter be addressed as a lot line adjustment.

D. Pierce stated a variance would be required since Lot 3.06 will not have any frontage. The applicant could submit a fully conforming application for a Class II subdivision. It may be a better planning solution to leave the 50' width with Lot 3.05 and grant a variance for Lot 3.06 without road frontage.

D. Banisch stated he could show or demonstrate he has adequate access to the lot that does not abut a public street. It would keep more traffic out of the corridor. The above comments are assuming that he could meet the test that he couldn't acquire the access in fee simple.

R. Cacciabaudo stated he has no problem with acquiring Lot 9 and granting a driveway for Lot 3.06 with an easement for Lot 9.

D. Pierce stated if he buys Lot 9, he still has to demonstrate access for emergency vehicles for Lot 3.05.

J. Mathieu polled the Board and all members were in favor of the above items.

E. Niemann recused herself from her position on the Board for the following matter.

Galleria Construction – Block 39, Lot 7 – Tumble Idell Road – Minor Subdivision w/variance – Public Hearing

H. Widman filling in for T. Miller. R. Lorentz was present as an expert as well as P. Casuscelli, a principle in Galleria Construction.

H. Widman stated the application is for a variance for a 2 lot minor subdivision. Each of the lots are slightly over 3 acres and are located in a two acre zone. The variance is necessary due to the contiguous net building area. The upper left lot is conforming.

D. Pierce stated he has reviewed the proof of publication and notice and the Board can exercise jurisdiction on the matter.

D. Pierce swore in R. Lorentz.

R. Lorentz testified Lot 7.02 is the northerly lot fronting on Tumble Idell Road and is fully conforming as shown. The variance request for Lot 7, which fronts on Barbertown Idell Road, has a rather constrained

triangular shaped building envelope with band of wetlands and associated buffers that traverse the property. The building envelope on Lot 7 is 18,995 sq ft, which is well under ½ of the normal building envelope. The applicant is prepared to make a demonstration that the building envelope cannot be increased in any way and if we reduce the size of the lot to a little over two acres, it then becomes 49.5% of the normal building envelope. A septic system design has been submitted on the lower lot. He was not involved in the permeability testing but was engaged for the calculations for the buildable area.

D. Pierce swore in P. Casuscelli.

P. Casuscelli testified he is a principle in Galleria Construction. The permeability testing was done on April 19, 2007. There is a septic design on the original lot.

D. Banisch stated the revised plan is a better arrangement than originally proposed. There is a limited usable area on remaining lands Lot 7. The current design goes with the natural features and lay of the land.

R. Lorentz stated the dwelling is not located in the wetlands. The location has already been approved as an isolated area. P. Casuscelli stated he has the permit for the area.

D. Banisch's memo was reviewed:

We have reviewed revised plans for the above-reference application, dated 4/25/07 and revised 3/12/08, and offer the following comments:

1. The two proposed lots have reconfigured. Previously, proposed Lot 7.02 on Tumble-Idell Road was shown at 2.1722 acres in area, where it is now shown at 3.14 acres in area. Proposed Lot 7 on Barbertown-Idell Road was shown at 4.3993-acres in area, where it is now shown at 3.08 acres. A common rear property line generally follows the direction of a wetland area on remainder Lot 7 and is a better configuration because more usable land is incorporated into proposed Lot 7.02. The last revision resulted in more inaccessible upland on remainder Lot 7 which would have required a wetland crossing to access the rearward portion of the lot.
2. Proposed dwelling units have been added to the revised plan and are shown with 2,100 sq. ft. footprints. A note should appear on the plan to reflect the requirement in Section 115-3B of the township ordinance that states, "Lots less than four (4) acres shall be permanently deed restricted to limit the size of the dwelling to be constructed to not more than 3,000 sq. ft." This should be made a condition of approval.

H. Widman stated the applicant is in agreement with the suggestion.

3. The applicant has provided a proposed 50' wide buffer extending outward from each boundary of the extensive wetland that traverses the Lands Remaining Lot 7 from northeast to southwest and that bisects the parcel into two upland areas. The buffer is also shown surrounding the wetland area in the northwest corner of Proposed Lot 7.02.
4. The applicant has addressed our comment regarding the "stone row along property line" on the southern boundary of the property. The plan now indicates a proposed 10' wide stone row preservation easement preventing the removal of the feature.

H. Widman stated the applicant is in agreement with the suggestion.

5. The applicant should provide testimony stating whether the required minimum two (2) acres unconstrained land is provided and those calculations for each lot.

R. Lorentz stated the unconstrained land in total on Lot 7, with this lot configuration, is in the neighborhood of one acre. The area in the building envelope is 19,000 sq ft. He has not done the actual calculation. The lot layout with the diagonal line is the best approach to dividing the property.

6. Variance is required from Section 132-30F(6) of the Township ordinance requiring Class I minor subdivisions to have a minimum buildable area of one acre. Proposed Lot 7.02 meets the buildable area requirement with a net buildable area of 1.314 acres. The Lands Remaining Lot 7 appears to have a net buildable area of 0.436 acres (18,995 sq. ft.), and therefore requires a variance.
7. The minimum buildable area is defined at Section 115-3 as follows: "Buildable Area - A contiguous area of at least one (1) acre of land located within the building envelope of a lot and which does not contain any constrained areas." Although not displayed in the calculations table, a note regarding the Net Buildable Area appears on each of the proposed lots stating: "Contiguous area within the setback lines of the proposed lot excluding any wetland or wetland buffers". The net buildable area calculations for each proposed lot should be included in the constrained area maximum tract yield calculation form.
8. The applicant should indicate whether an LOI has been received from the NJDEP. The board should condition any approval that may be granted on receipt of a NJDEP LOI. No disturbance should be permitted on site until such time that NJDEP approval has been received. The LOI Number should be added to the plan and the applicant should provide the submitted plan to the Board Engineer.

P. Casuscelli stated he has applied for the LOI and should have it within the next week or so. The buffer for Lockatong Creek should be a 50' buffer.

9. The plan is lacking an indication of the limits of disturbance. Plans should identify the total amount of disturbance proposed in this subdivision. Total disturbance may not exceed one (1) acres unless a stormwater management plan is submitted for approval. The limits of disturbance should be added as a condition of approval.
10. The 'Zoning Schedule' identifies the maximum building coverage for each lot as < 8%, which conforms to the requirements for the zone. Once the limits of disturbance are provided, the actual proposed building coverage should be identified in sq. ft. and the percentage of total lot area.
11. The Board Engineer should advise whether the proposed right-of way dedication is acceptable as shown.

T. Decker stated he would like to review the proposed right-of-way dedication.

12. Testimony should be provided indicating the status of all outside agency approvals required in this subdivision.
13. The Board should condition approval upon approval of any other agency with jurisdiction.

H. Widman stated the applicant will comply with all the Planner's requests in the above memo for plan revisions.

J. Mathieu requested comments from the public.

C. Wilson, resident at 1 Tumble Idell Road, expressed his concern about the water run-off from the lots. Will the issue be made worse by the installation of the septic systems and their mounds? R. Lorentz responded the majority of the flow will be from the northwest. There is a fairly sized ditch. R. Lorentz stated most of the development on the lot will probably occur in the middle and it will not be necessary to disturb any of the area between there and C. Wilson's lot.

C. Wilson and B. Casuscelli were sworn in by D. Pierce.

B. Casuscelli stated he will extend the swale between the properties on the property line and it will be shown on a revised plan.

P. Casuscelli stated he has made an application to the County Planning Board and has received approval from the D & R Canal Commission. The septic design has been submitted and he is waiting on the LOI.

T. Decker stated for stormwater management the application is considered a minor subdivision that fronts on two already approved roads. There are no existing impervious areas and an additional .25 acre is allowed. Each lot is deed restricted to one half of the required .25 acre of impervious coverage.

R. Lorentz stated there is no indication that the waterway is a Cat-1 watercourse. They are referring to a wetlands classification only.

It was moved by R. Dodds, seconded by S. McNicol and carried to adjourn the meeting to July 8, 2008, without requiring additional publication or notice. All members voted **AYE** on **ROLL CALL VOTE**.

E. Niemann resumed her seat on the board at this time.

Conservation Plan Element

A. Clerico stated it is still being revised for the public hearing in July.

Proposed Ordinance No. 15-14-2008

D. Banisch stated the ordinance is increasing development fees and is consistent with the general zoning ordinances.

It was moved by D. Haywood, seconded by S. McNicol and carried to recommend adoption of proposed Ordinance No. 15-14-2008 to the Township Committee for adoption. All members voted **AYE** on **ROLL CALL VOTE**.

Design Standards – Memo from Committee

The Subcommittee needs to meet with the Fire Company to get their input in regard to fire detention ponds or storage tanks. The subcommittee felt it has gone as far as it can without having legal input. In regard to trees and plantings, D. Banisch stated he has seen it addressed in a standard homeowner's association agreement. D. Banisch will provide a memo to the Board on those items. The Class 4 dam comes under the jurisdiction of the Township. It is a typical detention dam. The maintenance of the structure is covered under the DEP's BMP. For new subdivisions, there should be a maintenance manual that goes with it and incorporated with the homeowner's association documents.

Bunker Hills – Block 22, Lot 17

In response to the concerns of several board members regarding the lack of fencing around the detention basin on Block 22, Lot 17, T. Decker stated he has written a letter advising the owners the Board has a safety concern in regard to the fencing. The owners indicated they were having difficulty obtaining a four rail fence. They are requesting permission to install a three rail fence or wire fencing. The wire fencing would be 48" from grade which is 6" shorter than what was approved. He would like the opinion of the Board of how they would like it handled. The Board felt if the same height, 54", can be done in a 3 rail fence that would be acceptable.

PUBLIC COMMENTS

G. DeSapio, an attorney from Frenchtown and a Kingwood resident, stated he had received correspondence from D. Pierce indicating some questions have been raised by the Board members in regard to his appearance before the Board on matters. He stated he has been the attorney for the County since 1982. In 1982, he had discussed the issue and other conflict issues with his predecessor, Roger Mahon. Judge Mahon's opinion was that the County Planning Board has its own attorney. Under the statute that governs the County Planning Board's authority, the County Planning Board has jurisdiction over major developments, developments that front on county road and over developments that impact county drainage facilities. The County Planning Board has an advisory role on minor subdivisions and no statutory approval role. Since 1982, his practice has been to not represent anyone who has a major subdivision, a site plan or minor subdivision on a county road or drainage facility impacted by a minor subdivision. He can represent people who have minor subdivisions on municipal roads. He has come here this evening to explain the practice and his understanding of what the ethical requirements are for County attorneys and see if the Board has any questions.

J. Mathieu thanked G. DeSapio and stated the Board has been provided with all the correspondence and the opinion of the Advisory Committee.

COAH

J. Burke stated he would like to require deed restrictions to be in perpetuity rather than 30 years. D. Banisch responded you can extend the controls for the payment at the end of the 20 years. There can be a buy back time on affordable units that are about to expire. D. Banisch stated he does not think the affordable housing obligation will ever go away. The Township will still be dealing with COAH in 30 years.

T. Decker and D. Banisch left the meeting.

EXECUTIVE SESSION

RESOLUTION NO. 2008-09

WHEREAS, Section 7 of the Open Public Meetings Act, Chapter 231 P.L. 1975 (R.S. 10:4-13) permits the exclusion of the public from a meeting or a portion of a meeting of this public body in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist;

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Kingwood, County of Hunterdon and State of New Jersey as follows:

1. The public shall be excluded from the meeting or a portion of a meeting at which this public body discusses the hereinafter specified subject matter.
2. The general nature of the subject matter to be discussed is as follows:

**Pending Litigation
Personnel**

3. The time when the circumstances under which the discussions conducted in closed session of this public body can be disclosed to the public is as follows:

The minutes of the closed session will be made public upon conclusion, dismissal or settlement of litigation; or final resolution of agreements or personnel matters; and in any event, when appropriate pursuant to N.J.S.A. 10:4-7 and -13.

4. This resolution shall take effect immediately.
5. The Planning Board may take additional action upon returning to regular session.

It was moved by R. Dodds, seconded by D. Haywood and carried to enter in Executive Session. All members voted **AYE** on **ROLL CALL VOTE**.

J. Mathieu announced the Board has returned to regular session.

Conflict of Interest

It was moved by L. Senus, seconded by J. Strasser and carried to authorize the Planning Board attorney write a letter to G. DeSapio indicating the Planning Board has obtained sufficient information regarding the conflict of interest issue but are requesting G. DeSapio provide documentation to demonstrate if the County legal services' framework is structured in such a way that there is a County Law Department and the County Planning Board

attorney reports to County Counsel with respect to the County Planning Board attorney's legal services. All members voted **AYE** on **ROLL CALL VOTE**.

Appointment of Sub-Committee for Proposed Baptistown Town Center Investigation

E. Niemann, L. Senus, T. Kratzer and M. Syrnick volunteered for the Sub-Committee. E. Niemann will request some members of the Housing Board to participate also.

CORRESPONDENCE

J. Mathieu reviewed as per the agenda.

PRIVILEGE OF THE FLOOR

R. Dodds inquired as to the progress of the conservation easement. D. Pierce stated based on tonight's conversations, there are some revisions that are necessary to the version presented to the Board earlier. The Township Committee will have to develop an ordinance.

ADJOURNMENT

It was moved by J. Strasser, seconded by R. Dodds and carried to adjourn the meeting at 11:27 PM. All members voted **AYE**.

Respectfully submitted,

Diane Laudenschick

Diane Laudenschick, Secretary