

MINUTES

PRESENT: M. DeSapio
T. Kratzer
R. Phillips
S. Zdepski
J. Novak, Board Attorney
D. Pierce, Planning Board Attorney

ABSENT:

CALL TO ORDER

The meeting was called to order by M. DeSapio at 8:00 PM.

NOTIFICATION

In order to ensure full public participation at this meeting, all members of this Board, and members of the public are requested to speak only when recognized by the Chair so that there is no simultaneous discussion or over-talk, and further, all persons are requested to utilize the microphones which are provided for your use by the Township. Your cooperation is appreciated.

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

NEW AND PENDING MATTERS**Approval of Minutes**

It was moved by S. Zdepski, seconded by M. DeSapio and carried to approve the minutes of June 5, 2006 and place on file. All members present voted **AYE**.

Septic Alteration – Block 33, Lot 23.01

S. Parker of Parker Engineering was present for the application this evening. The application is for an alteration to a septic system as a result of the sale of the property. The malfunction was detected during a home inspection. His firm performed the basin flood test and the results of their investigation are in the design. The depth to ground water is less than 24". There is no permeability on the property. The basin flood test failed. Since the results of the test do not comply with the code, the local Board of Health must approve the application. The system is a mounded system with the bottom of the field mounded 48" above the highest ground water elevation. The system has an over design by 25% over the code to account for the lack of permeability. He has designed a system that will account for the conditions on the property the best way he can. When he was called to the property to evaluate the malfunction of the system, he did observe effluent on the ground. There is currently someone living in the home. The design is for a three bedroom home. The house must stay a three bedroom home. There is no allowance for an expansion as the system does not meet code standards. Septic systems are based on the number of bedrooms not bathrooms. The current system is a below grade system and smaller than the one designed. The house was constructed in the 1950's or 60's. During March and April, the system was full of ground water. When that occurs, the effluent goes into the field and surfaces on the grounds. There is a pump in the system and the pump has an alarm. If the pump malfunctions for any reason both a light and an audible alarm is triggered to notify the residents. There is a reserve capacity

designed into the pump tank for one days' full usage. The system is original to the house. They dug in several locations on the property and this is the best location, given the conditions on the property, to site the septic field with the system he designed. The septic system is approximately 240' from the Lockatong Creek. The County Department of Health has reviewed the design and written a letter to the Board of Health indicating the waivers the applicant requires for the proposed system.

After some discussion regarding condition #3 of the County Health Department requesting a deed notice, it was recommended to the applicants that it would be a good idea but not a requirement.

It was moved by S. Zdepski, seconded by D. Phillips and carried to grant the requested waivers on the above captioned application. All members present voted **AYE** on **ROLL CALL VOTE**.

**Deer Run and Equestrian Village – Block 12, Lot 31 and Block 14, Lots 28.02 and 30 –
Public Hearing and Proposed Settlement of Lawsuit against
Board of Health**

J. Novak, Board of Health attorney, was present for the above matter. There have been four complaints filed against the Township. All of the complaints include the Township Committee. One of the complaints is against the Board of Health for the well testing ordinance. One is against the Township Committee for the zoning amendments. There are two complaints filed with the Tax Board for the roll back taxes assessed on the above properties. The Board of Health complaint was filed last December challenging the well ordinance that was adopted in November of 2005. The Township Committee modified the checklist to require the well testing. The Township Committee, with the help of the Planning Board, adopted a change to the zoning requiring seven acre zoning. Prior to the changes, the Deer Run project filed their application in June of 2005. The Equestrian Village filed their application in February of 2006. The applications had been filed prior to the adoption of the ordinances. The plaintiffs allege, in the complaints, that the actions of the Township were arbitrary and capricious. They basically stated the ordinances were adopted in reaction to their applications. The tax court complaints were filed in February of 2006 on the Deer Run property. The plaintiffs contended that roll back taxes for 2003, 2004 and 2005 in the amount of \$334,000 should not have been assessed. There were no lots and no approvals. The property was open farmland. On the Equestrian Village property, the plaintiffs were assessed roll back taxes for 2003, 2004 and 2005 in the amount of \$334,000. The roll back should not have been assessed because the property does not have any approvals. The plaintiffs contend the current tax assessment on the three lots, 300 acres, of \$10,700,000 is inappropriate. The Deer Run project contains 76.3 acres and is proposed to have 15 building lots. The Equestrian Village project contains 255 acres and was proposed to have 48 building lots. The two projects together proposed to have a total of 63 lots. Under the old ordinances, the calculations determined they could possible get 78 lots. The plaintiffs originally proposed 68 lots on the two combined projects. A management conference in the tax court is scheduled for October 18th. If the matter moves forward, the next step is to hire an expert to prepare reports to substantiate the township's position on roll back and current assessments. The litigation for the other matters has had several case management conferences. At the second conference, after the judge had reviewed the preliminary pleadings, he suggested the parties confer with regard to possible resolution of the matter. The professionals who attended on behalf of the Township were D. Pierce, Planning Board Attorney, R. Lorentz, Township Engineer, and J. Novak, Township Attorney. The plaintiffs assumed the cost of the attendance of the professionals at the conferences. There were four meetings, each lasting several hours. The net result is this proposed settlement agreement. The proposal suggests the Deer Run application would be deemed complete as of October 11, 2005, prior to the adoption of the new well ordinance. The old zoning standard would govern that application. The proposal provides for 15 lots in the Deer Run application. The proposal requires the application would have to be submitted in the regular course of treatment of an application by the Planning Board. In the Equestrian Village application, the number of lots was reduced to 43 lots, for a total of 58 lots rather than 63 lots. The

agreement provides for various considerations. Under the old ordinances, the developer would have been entitled to 78 lots. If the Township's ordinance was fully sustained in a court action, the developer would be entitled to 38 lots. In the preliminary discovery of this case, it shows the developer is not your normal developer/plaintiff. Most often, you see the developer will sign a contract with a farmer to buy his property, put \$50,000 in escrow and require they get "x" number of lots. The payments do not start until final approval and certificate of occupancy are issued. He has been involved in Union Township with Hovnanian. The property in Union Township, owned by Mr. Milligan, did not receive any money from the sale of his property. His Estate received the proceeds. Their agreement was subject to getting all of their approvals and not until the end did they close on the property. The property was sold to several conservancy groups. In this case, the plaintiff came in and purchased the property for \$7.2 million dollars for the five lots. They stated they are builders and developers wishing to buy the property and intend and will build the houses. There will either be 58 or 78 lots on this property, no matter how it is resolved. There was initial contact made from some conservancy groups and there was a number floated out there of approximately \$1.5 million to purchase the property to take it out of any housing development. The proposed agreement calls for a reduction from 63 to 58 lots. The plaintiff will build on 55 of the lots. Three of the lots will be dedicated to the Township. There are some restrictions if the Township chose to set the lots as open space. If the Township were to sell off the lots, it is possible these lots would bring in the range of \$250,000 per lot, with a net profit to the Township of \$750,000. The Board of Health is being challenged for the requirement of well testing within 2500' of the property line, that is 1/2 mile and inappropriate. Our ordinance requires notice to be provided to people within 2500'. The proposed settlement pulls the area of testing to 500' of the outward boundary line of the property. The plaintiff is willing to establish an escrow account in the amount of \$10,000 to compensate the owners within 500' for the cost of monitoring their wells during the testing on Equestrian Village. When the escrow becomes depleted to \$5,000, it will be replenished to the original \$10,000. The plaintiff offered to establish an account, for a period of 10 years, based on the number of lots, \$105,000, to anyone in the area who feels their well has been affected by the wells on this development. If anyone feels their wells have been affected by the wells on this development, they would need to contact the Township hydrologist. The Township hydrologist would make a determination as to whether you could tie the normal use of the well the way it existed before and the current condition to the wells on the development. The money is for rehabilitation or replacement of the well. If there was a court mandated judgment, there would be no contribution of the three lots. If the old ordinance was sustained, there could be 78 or 63 lots on the site. If the court upheld the Township, there could be 38 lots, with no contribution to the Township. The project could take 1.5 to 3 years to go through the courts. The Township has sought substantive certification from COAH. The Township will have a COAH obligation to provide some low/moderate income housing and rehabilitation. The Township will either have to provide the units for the rehabilitation or building of low and moderate income housing. They can also enter into Regional Contribution Agreements, which sends our responsibilities to other towns. The other towns are paid a certain sum of money. COAH fees are paid half at the issuance of the building permit and half at the time of the Certificate of Occupancy. The Township would not receive the funds from this development for two or three years. With the agreement on the 15 lot subdivision, the COAH payment would be required to be paid within 31 days of the adoption of the memorializing resolution by the Planning Board at \$31,250 per lot, for a total of \$468,750.00. In the Equestrian Village development, the COAH payment would not be made until final Planning Board approval or DEP approval, whichever comes last. The payment will be in the amount of \$1,250,000. The monies would be deposited into a low/moderate income trust fund to be utilized for the growth share purposes in this round or for the obligations the Township might incur for 2011. In regard to off-tract improvements, the developer would be liable for the same improvements. The settlement does not address any changes to the current ordinance requirements. In regard to the Tax Board cases, the properties have a rollback tax for 2003, 2004 and 2005 on a \$10.7 million assessment, in the amount of \$222,741.00, which is due by November 1, 2006. The real estate taxes on the properties for 2006 are in the amount of \$330,376.00. As of October 1, 2006, the assessed value for 2007 on all the properties will be \$6 million. If the Deer Run project receives its approvals on the 15 lots, it would be reassessed in 2007 with an added assessment for the value of building lots

rather than open land. The net project on the 330 acres will be 58 lots, 55 of which would be developed by the developer and 3 lots to the Township. The density of the development is 5.5 acres per lot. The proposal was presented to the Planning Board at their September meeting and approved.

D. Pierce stated Exhibit "D" was the subject of substantial negotiations with the plaintiffs, their hydrologist, Planning Board members and the Township Hydrogeologist. It offers the Township a mechanism for a level of protection the Township would not be entitled to under the current ordinance.

It was moved by S. Zdepski, seconded by M. DeSapio and carried to open the hearing to the public. All members present voted **AYE**.

J. MacConnell commented on the defense of the litigation requiring seven acres, the studies for the well ordinance, the closeness of the home sites, the unsuitability of the site due to the Buck Eye Pipeline and the possible interest of the Land Trust to purchase the property.

W. Pandey commented on the permeability testing, the condition of the road, the increase in the population in just that part of town and the construction traffic.

J. Novak commented in response to the above comments by stating the properties are owned by two LLC. One of the LLC owns two of the lots and the other one owns Deer Run. The only members of the corporations he is aware of is F. Palopoli and S. Palopoli. The judge, who was originally handling the matter, was Judge Peter Buchsbaum.

T. Hauck commented on advising the Planning Board not to compromise nitrate dilution by lot size averaging or clustering, the increase in traffic on the road, the presence of the Buck Eye pipeline.

S. McNichol – Oak Grove Road – commented on the size of the homes, the excessive use of water by sprinkler systems and pools, stormwater protection, Township's hydrogeologist participation in the development and increase in traffic.

J. Pandey commented on health issues, stormwater run off, road conditions, traffic on the road of farm implements, excessive use of water in pools and sprinklers, traffic from the residents of the development, concern for current water supply, pollution of the water supply, need for more police patrols and that the Township should not get into the construction business.

S. Zdepski stated the Township has intentions of improving Spring Hill Road in 2007 or 2008. The road will be completely redone from Route 519 to Horseshoe Bend Road.

L. Schmidt – Tumble Idell Road – commented on the obligation these homes will create for COAH, the possibly inadequate fund for the rehabilitation or repair of wells affected by the development, the developability of the three lots being donated to the Township and the access of the new roads.

S. Zdepski stated the development was included in the Round 3 numbers provided to COAH. He stated the Township does not want to be a Housing Authority but we would be able to obtain some funding to provide for the put in some of the housing. It is \$40,000 to send one unit out of our town. Our obligation is approximately 30 homes. We have ten years to accomplish and fulfill our requirements. The Township has to prove to COAH it is making a sincere effort. The last thing we want is to let the builder do it and build more houses.

D. Pierce stated the lots are buildable. The things making the lots undevelopable would not apply to this development. The crux of the entire legal challenge is if the plaintiffs are successful then the old ordinance applies and if they are not, the new ordinance applies. The agreement provides the Planning Board will hear both applications at once.

J. Spering – Spring Hill Road – commented on the presence of wetlands in the area, road conditions, loss of property due to road widening, increase traffic on the road and contamination.

S. Zdepski stated the members this evening have a lot of questions and concerns. They should be addressed at the Planning Board. The only matter before the Board of Health is the settlement. One way or the other, there will be houses built on these lots. As a result of hearing the comments and concerns this evening, he would hope each of the public present this evening comes to the Planning Board meeting in October. The Board of Health is concerned with water issues. As per the agreement, there are monies, of over \$100,000, placed in escrow for wells which might be affected by this development within 500' of the subject property. There is \$10,000 in an escrow account built in for the monitoring of wells closest to the property. The settlement conferences that took place were directed by the court. All the demands that were finally negotiated and agreed to were the demands your representatives and professionals presented to the plaintiffs. The plaintiff came to the meetings and offered nothing.

J. Novak stated if the settlement is rejected the litigation will return to the courts. The Tax Court case will proceed. The Tax Court case is not immaterial. The taxes assessed this year need to be collected. If they are not collected, the entire Township has to share in the shortage the following year. If the Boards approve the settlement, the matter can go forward.

As a result of J. MacConnell's inquire as they when J. Burke received notice of the settlement discussions, J. Burke responded he was informed at last month's Township Committee Executive Session. J. Novak stated a letter was sent on April 10, 2006 to the Mayor, Township Committee and Township Clerk informing them of the Case Management Conference on April 7, 2006.

W. Pandey – commented on another property owner who had lost their water after the test wells were dug on the east side of Horseshoe Bend Road. J. Novak responded their monitoring would not be paid but if they could tie the loss of water to this development, it would be paid through the fund. The hydrogeologist would be making the final decision of who was entitled to reimbursement.

T. Kratzer commented the Ground water ordinance was looked at in the 1990's. The first draft was done in 2001. He stated, as a result of the drilling, the well at the "Clinton's house" had a drawn down of 4.96 feet. Our ordinance provides if any drawn down is more than five feet, the well cannot be certified. The ordinance requires a 90% recovery. The subject well never recovered. The applicant's have reduced the radial distance from 2500' to 500' for notifying of the testing. He would like it to be 2500'. D. Pierce responded the ordinance requires within 2500' of the test well. The notification in the agreement requires 500' from the outlying property line.

T. Hauck commented the wells currently dug on the property comply with what is required in the ordinance and once our hydrogeologist states there is sufficient water, the applicants can drill the other 11 wells. The pasture well is only .5 gallons per minutes. When it was originally dug, it was artesian. He stated he was thankful for the \$100,000 placed in escrow.

Frank Wisniewski stated the 2500' is measured from perimeter of the property and not from where the well is being dug. Notification has been reduced to 500' from the property line. If someone's well goes dry and they can relate it to this development, they would have the opportunity to have their well rehabilitated or replaced.

The monitoring is to within 500' but a well that has gone bad can be anywhere in the township and if it can be attributed to the development. The settlement agreement does not change the township's right to approve that there is enough water. The testing on Deer Run is complete but Equestrian Village will not be done for another month or so. They will need sufficient water to accomplish the development. The Planning Board will review the water testing.

J. Pandy inquired if well studies are performed using dyes to indicate the location of the water underground. T. Kratzer responded yes, to trace water. T. Kratzer stated if the hydrology is correct and there is a recharge area up gradient. It is a hit or miss situation and it is difficult to know where to put the dye.

It was moved by M. DeSapio, seconded by T. Kratzer and carried to close the public portion of the hearing. All members present voted **AYE**.

J. Novak stated the proposed settlement agreement will take care of all four lawsuits. The settlement agreement will be on the Township Committee's agenda for tomorrow evening.

It was moved by S. Zdepski, seconded by M. DeSapio and carried to authorize the acceptance of the settlement agreement for the Board of Health and authorizing the Chairperson and Secretary to sign for the Board of Health.

ROLL CALL VOTE: **AYES** – DeSapio, Zdepski
 NAYS - Kratzer, Phillips
 ABSTAIN - None
 ABSENT - None

J. Novak stated the motion failed for a lack of a majority vote. Does the Board have any recommendations, changes or concepts they would like incorporated into the agreement?

J. Novak suggested a possible change of notice being provided to the residents within 2500' of the property but the residents within the first 500' can have their well monitored and paid for by the applicant. T. Kratzer stated he was concerned about the recharge area and how many homes up gradient could be affected. The residents at the top of the hill will lose their water first. J. Novak stated the motion should be made to approve the settlement to require notice within 2500' and an up gradient fund be available for the full extent of 2500'. T. Kratzer stated you would not be able to provide it. He is not satisfied with the Deer Run report. The recovery did not happen and the drawn down was almost 5'. He cannot make a decision which will affect everyone in this township. The decision would have to protect the health and well being of the citizens of the township.

S. Zdepski stated he feels it is unfortunate. The agreement has some safeguards we would not get if the matter goes to court. Without the built-ins for the residents in front of us, they will not get any built-ins. Whether there are 38 homes or 78 homes, these residents will get nothing if the matter goes to court.

D. Phillips stated he cannot make a decision this evening. He did not have an opportunity to review the information provide to him this evening.

B. Pandy inquired if there was a deadline to approve this settlement. J. Novak stated there were no deadlines for approval.

S. McNichol stated there were many items brought up this evening and these items should be brought before the Planning Board. The draft was presented at the Planning Board with no copies available at the time for our review. Is it possible to extend it for one more month to be able to present it to all the Boards? J. Novak responded there are no court mandated dead lines. The applicant has presented the timing. They obviously have millions of dollars invested into this property and the agreement was reached with representatives of the Township Committee, Planning Board and Board of Health. We were going forward with the understanding we were to do our very best on behalf of those parties. The result is the settlement agreement.

S. Zdepski stated the agreement is a lawsuit settlement. The planning issue still has to be decided. The Township has to remove the lawsuits and obtain relief.

J. Sperring commented the Board is split and should be given the opportunity to consider the material presented to them. The development impacts the entire Township. The settlement has not been available for review and has some revisions. J. Novak compared the original and this revised settlement and the only changes were to clarify the tax numbers and tightened up Exhibit D. Nothing detrimental has been added.

J. MacConnell commented in regard to the Planning Board, they were given a draft document and requested to vote on it the same evening. S. Zdepski responded the Planning Board, in closed session, had the settlement explained to them. There were additional items brought up in the closed session which the attorney was instructed to request from the applicants.

E. Niemann commented the written document was not provided to the Board until the evening of the meeting.

J. Pandy stated there was no vote in Executive Session and the Board member should have been allowed to read the documents and compare. S. Zdepski stated the purpose of the settlement is for the residents who live near the property. The Township representatives who were responsible for the agreement fought for its contents. The representatives got the number of lots cut down, \$100,000 in escrow for the next 10 years, and \$10,000 for a fully replenishable escrow.

J. MacConnell commented there are legal remedies for me if his well goes dry. Provide D. Phillips and T. Kratzer some time to read the agreement and digest it. S. Zdepski responded it is about honesty and integrity. The Board knew what was happening, as well as the Planning Board and Township Committee.

F. Wisniewski commented all the objections from the residents and board members can be made during the processing of the applications. The applicants still have to meet all the requirements. If the applicants can establish that this configuration of lots will work from a drainage, septic and well standpoints and the roads. The agreement does not bind the Township to anything if the applicants cannot meet the requirements. The agreement does not force anyone to approve anything that is not workable. The agreement locks the Township into the bulk standards. All other approvals will have to be obtained, county, state and Township. There is a lot density of 5.5 acres. T. Kratzer stated he could make a better decision with more data. It doesn't tell what the water supply can handle. F. Wisniewski responded, if the applicants can demonstrate to the standard your professionals are using, that the water supply can support this number of lots, the applicant will get this number of lots. If our testing does not support the number of lots, we do not get that number of lots. T. Kratzer had a concern that a density of 5.5 acres provides enough spread with the extraction of water and the replenishment of water without some type of data or analysis being done. T. Kratzer stated he could not make a decision if this will go through a viable option for uses of water in the area and how the current residents are being affected. The Deer Run report does not prove there is an adequate water supply.

J. Novak stated, on the project site, each lot much have its own septic and well and has to pass County approval. The Planning Board would fashion its approval if that standard approvals are not acquired, it would require the merger of lots. The concept was to fashion a skeleton to work by. The stipulation is to dismiss the lawsuits without prejudice.

S. Zdepski stated the issue will not be resolved tonight or tomorrow. The agreement is resolving the lawsuit. The planning issues are still pending.

D. Pierce stated, if the settlement is approved, the applicant will appear before the Planning Board. Hopefully, the settlement will be approved this evening by the Board of Health and tomorrow evening by the Township Committee. The applicant's are proposing to begin their hearing October 10, 2006. The applicants will have to demonstrate, for every lot seeking approval, they meet the Township's ordinances in effect. It is not appropriate to deny a subdivision application for items not regulated by Township ordinance. The well test ordinance has a standard. If you show less than this drawdown, you satisfy the ordinance requirements. The Board has no authority, as part of the application review, to deny the application. The Board of Health is being asked to approve the settlement to move the application forward for consideration by the Planning Board. Approving the agreement allows the settlement of the lawsuits and the ability to proceed on the application before the Planning Board on the merits.

M. MacConnell inquired why is the applicant applying for preliminary and final approval on first hearing. F. Wisniewski stated the Deer Run application has been complete since June of 2005 and would have been approved in October 2005 except for the changes in the well ordinance. F. Wisniewski stated the application has been reviewed by the professionals, the well testing report has been submitted and accepted by the Township hydrogeologist. The application is ready to proceed. The Equestrian Village is a new plan. It was submitted last year but the applicant has reduced the lots by 5. It has been reconfigured but the interference testing has not been completed. The applicants are seeking preliminary approval.

T. Hauck commented the Planning Board did not realize the Township had provided only for interference testing within the subdivision. He requested the Board of Health to adopt an ordinance requiring interference testing a distance from the outlying property lines. The applicant had drilled four wells. One of the wells recovered 85%. The Planning Board changed the zoning from four acres to seven acres. The Board of Health should protect the Township's aquifer. The applicant is providing \$100,000 for ten years for the replacement or relocation of existing wells affected by the subdivision.

J. Pandey inquired if the funds would be available to the homes in the development should there well experience any problems. J. Novak read from the settlement, which provides the protection to the wells currently in existence.

T. Kratzer stated he has not had a sufficient amount of time to review all the documents and information.

F. Wisniewski stated, in regard to the well drawdown, two of the wells did not achieve the 90%. M. Zdepski, geologist, explains there more than sufficient wells in these locations to provide the needed capacity for the Deer Run subdivision.

S. Zdepski stated, if the Board of Health does not come to some resolution or modified resolution this evening, the applicant's will not be able to appear before the Planning Board for their preliminary hearing. The hearing before the Planning Board will be the place to address all the concerns of the residents in regard to the development. He stated he was open to have any thoughts of T. Kratzer and D. Phillips, to modify the

agreement. Since both T. Kratzer and D. Phillips requested more time, would they be in favor of scheduling a special meeting? J. Novak stated three members must be present to have a quorum.

The Board adjourned the meeting until October 3, 2006 beginning at 6:30 PM without further notice being provided.

CORRESPONDENCE

M. DeSapio reviewed as per the agenda.

PRIVILEGE OF THE FLOOR

ADJOURNMENT

It was moved by M. DeSapio, seconded by D. Phillips and carried to adjourn the meeting until October 3, 2006 beginning at 6:30 PM. All members present voted **AYE**.

October 3, 2006 – 6:30 PM.

PRESENT:

- M. DeSapio
- T. Kratzer
- D. Phillips
- S. Zdepski
- J. Novak, Attorney
- D. Pierce, Planning Board Attorney

J. Novak stated the meeting has been closed to public and opened for discussion among the members of the Board of Health.

T. Kratzer stated he has had an opportunity to review the draft of the settlement agreement, Exhibit "D" and accompanying maps. The intent of Exhibit "D" is to replace the well ordinance or sections thereof and is concerned about the proper procedure to make that change.

J. Novak stated the matter is in the midst of litigation. As a result of that, most litigation goes through a compromise. In a settlement, no one leaves totally happy and no one is left in a lurch. In putting a meaningful compromise, in regard to the well ordinance, some concessions needed to be made. The settlement established the escrow for the monitoring testing and a ten year funding replacement fund. Our ordinance required notices to 2500', but the applicants sought to limit it to 500'. The agreement was to limit it to 500' but with the applicant paying for the monitoring of the wells within those 500'.

D. Pierce stated the agreement was designed and developed in consultation with P. Althoff. P. Althoff, in her opinion, felt it was adequate. In the event the data shows or creates some question, which gives rise to a belief by P. Althoff, that additional data is needed, the Planning Board can request the additional data. The agreement is not a substitute for demonstrating they meet the requirements of providing a safe and adequate supply for the development and not affect the existing ones.

T. Kratzer read from her view, dated July 19, 2006. Her conclusions recommended a three part pump test be required for each well on the property. He does not see that recommendation in Exhibit "D".

D. Pierce stated Exhibit "D" is meant to address the well and interference testing. Each well will be subject to a pump test. There is no requirement under the current ordinance. It is subject to interpretation. The applicant will have to satisfy the Board that they can provide a safe and adequate water supply. The Board has the right to impose conditions to satisfy their concerns.

J. Novak stated Exhibit "D" applies to Equestrian Village not the Deer Run project. As per the settlement agreement, the Deer Run application is proposed to be deemed complete as of October 11, 2005.

F. Wisniewski stated Exhibit "D" does not approve the project and does not confirm there is sufficient water based on the report. They have met the standards for testing. The determination of sufficient water has not been determined. Exhibit "D" sets up the protocol for the testing for Equestrian Village. The testing for Deer Run is done and has been accepted. Exhibit "D" does apply to the Deer Run and Equestrian Village development in regard to repairing, replacing or modifying any wells adversely affected by the two developments. It is a protocol as to the procedure for testing.

T. Kratzer stated Exhibit D, 2nd paragraph split the area into two different regions rather than Equestrian Village as a whole. F. Wisniewski responded P. Althoff had mentioned the testing across the street. They will be submitting a proposal to do testing on Equestrian Village and P. Althoff will review the proposal. T. Kratzer stated there are natural water divide references. A natural water divide is a peak in the watershed. A creek is not a water divide. F. Wisniewski responded it may not be technically correct but P. Althoff requested the language in the agreement. D. Pierce suggested removing the last language and adding P. Althoff purposes was to require interference testing on both sides of the stream. D. Pierce stated P. Althoff, after seeing the Deer Run result, has determined it would be appropriate to conduct two pumping tests on both sides of the stream. The ordinance requires one test. T. Kratzer stated a single aquifer test would be representative of the area and a more critical testing of the aquifer. D. Pierce stated the language is indicative of a question in P. Althoff's mind that there may be two different aquifers. Two tests might be able to make a conclusion if they are connected or separate. J. Novak suggested a modification of requiring one or two pumping tests to be conducted based on the hydrogeologist's recommendations. T. Kratzer stated the next paragraph indicates the tests will be monitored and recorded but does not indicate the criteria to be used in the evaluation and monitoring. It also does not reference the Township's ordinance. D. Pierce stated anything in the ordinance not expressly modified by Exhibit D would apply. T. Kratzer stated he needs some definitions such as what is meant by rendered unusable and would it allow for drought conditions to render it unusable. F. Wisniewski stated the township's hydrogeologist will make the determination of what is meant by unusable. It is not possible to cover each particular scenario and every degree of possibility. T. Kratzer commented on the second page at the top. J. Novak responded the Township's professional will be the person who is the ultimate control person. T. Kratzer stated he would like to see a definition of "unusable". F. Wisniewski stated the resident contacts the Township consultant and they review the matter and make a determination. The escrow funds will be in place for a period of 10 years, which period should cover the full range of possibilities. T. Kratzer stated 500' is fine if it is located at the top of the aquifer. After looking at M. Zdepski's results, it seems we may have a problem. The conditions are a tube of water coming down the side of the hill with a spigot at the bottom. If there is no water left in the fracture and the water being taken from the bottom of the hill, it will leave a problem for the residents at the top of the hill. The more wells put in down hill provides for a potential of problems in the up-hill part. 500' would not be a problem if it was a flat area. There is a significant gradient. Recharge area is 6000' up gradient. This could mean a selected number of observation wells in the aquifer. It is a homogenous condition without the extent of a confined aquifer. It is definitely a concern to the south east in the area where Thatcher Road crosses the Lockatong. A determination has to be made where to locate the observation wells. F. Wisniewski stated the hydrogeologist will determine when she reviews the plan. J. Novak stated the notice will go to residents within 2500' of the outbound property. The residents within 500' are entitled to monitoring of their wells out of the escrow funds. Any additional testing required by the hydrogeologist will also be paid

from the escrow funds. T. Kratzer stated in the settlement agreement, #22, refers to the RSIS waiver. F. Wisniewski stated if the township grants the waiver, the applicant would then apply to the DCA. The Planning Board wanted the lots to have access to the interior road. F. Wisniewski stated it is his understanding, in regard to Exhibit D, if it addresses certain issues, those would apply, if it does not address those issues, the well ordinance complies.

J. Novak stated the title of Exhibit D will be changed to state "Supplemental Well Testing Specifications". Exhibit D contains the refinements the township has negotiated in the settlement agreement. T. Kratzer expressed his concern in regard to the agreement being reviewed by the public. The Well Ordinance was adopted after a public review and hearing. J. Novak stated the agreement imposes more standards than the well ordinance permits. The agreement only pertains to this property. There is work that needs to be done with the township's well ordinance. T. Kratzer stated the bottom of the first paragraph indicates waivers. F. Wisniewski stated no one believes any waivers are necessary. It made sure the agreement did not lock in everyone. One of the waivers might be the township requests a driveway to be placed in a certain area. The township's standards might not permit the location. D. Pierce stated an example might be, if the well testing shows a section of the property cannot be developed due to water capacity, the applicant might have to reconfigure one of the lots or the township might require more lots on a cul-de-sac than our ordinance permits. T. Kratzer was concerned about #32 which indicates "with prejudice". J. Novak stated "with prejudice" does not allow any further action on the matter and "without prejudice" allows an opportunity to open the matter. T. Kratzer stated the agreement and escrows for different things are based on Frenchtown Run LLC and Horseshoe Bend LLC, will Frenchtown Run and Horseshoe Bend exist in 10 years?

J. Novak stated once the Planning Board approves the project, he will draft the development agreement which deals with any performance or maintenance bonds. There will be no release of the funds until the new successor developer posts all the necessary bonds and escrows. After all the monies have been posted and outstanding obligations charged, the remainder will be released to the developer.

D. Pierce stated the public hearing on Deer Run will begin on October 10, 2006. In the Deer Run application, the initial monitoring has been completed. Based upon what P. Althoff states to the Board and potential public comment from affected individuals, the Planning Board can require additional testing or information. The matter will not come before the Board of Health for final review. J. Novak stated the Board of Health serves as an advisory to the Planning Board and the Board might ask your opinion on something or a specific report.

T. Kratzer stated M. Zdepski's report on the Deer Run subdivision, he feels, has some problems with the water supply. If we expand to Equestrian Village immediately and put in three homes, a pump test is only an 8 hour test and stresses the aquifer temporarily. The permanent homes might be a constant stress on the aquifer.

D. Pierce stated as a result of tonight's action of the approval of the settlement agreement, it will allow a parameter of the settlement to stop the litigation to allow the applicant to proceed to the Planning Board for consideration on all the merits of the application. He suggested the Board provide their comments and concerns to the Planning Board.

J. Novak stated the Township feels it is a win situation for themselves. The Township is coming out of the agreement with more than is provided in their ordinance. If the settlement agreement is not approved, the application will only have to comply with the well ordinance.

M. DeSapio requested any other questions or concerns from the Board.

J. Novak stated the next step is to prepare a resolution that the board considered this as their Whispering Woods type hearing and upon conclusion have determined the Board would authorize and approve the Chairman and Secretary to sign it with the previously discussed amendments:

Exhibit D – 1 or 2 pumping tests stream;

Page 1 – begin with as Horseshoe Bend and Deer Run;

Page 2 – notification of neighbors would take place of the outbound subdivision 2500’, 500’ of their own choosing paid out of an escrow fund and anyone else or a specific area the township hydrogeologist should determine is an area of concern would be paid from the escrow agreement;

Item #18 – add complete and acceptable to testing protocol.

It was moved by M. DeSapio, seconded by S. Zdepski and carried to introduce the above referenced resolution. All members present voted **AYE** on **ROLL CALL VOTE**, except T. Kratzer, who abstained.

Correspondence

M. DeSapio reviewed as per the agenda.

Privilege of the Floor

E. Neimann requested an update on the subcommittee for the well ordinance. T. Hauck stated the ordinance is coming along. The next meeting will be on October 10th.

Adjournment

It was moved by M. DeSapio, seconded by R. Phillips and carried to adjourn the meeting at 7:53 PM. All members present voted **AYE**.

Respectfully submitted,

Diane Laudenschick, Secretary