

**MINUTES**

**PRESENT:** M. DeSapio  
T. Kratzer  
R. Phillips  
S. Stryker  
J. Kopen, Attorney

**ABSENT:** J. Burke

**CALL TO ORDER**

The meeting was called to order by M. DeSapio at 8:03 PM.

**NOTIFICATION**

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

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

**NEW AND PENDING MATTERS**

*Approval of Minutes*

It was moved by M. DeSapio, seconded by S. Stryker and carried to approve the minutes of July 16, 2008. All members present voted **AYE**.

*Frenchtown Run LLC and Horseshoe Bend LLC – Amendment to Settlement Agreement  
Public Hearing;*

It was moved by M. DeSapio, seconded by T. Kratzer and carried to open the public meeting on the above captioned. All members present voted **AYE**.

No comments were heard from the public.

It was moved by S. Stryker, seconded by R. Phillips and carried to close the public hearing on the above captioned matter. All members present voted **AYE**.

Resolution No. 2008-01 – Amendment to Settlement Agreement – Frenchtown Run LLC/  
Horseshoe Bend LLC – Adoption of Proposed Resolution

J. Kopen stated the settlement agreement was amended as follows:

1. Paragraph 27A shall be deleted in its entirety and replaced by the following: “Frenchtown Run, LLC shall satisfy its affordable housing obligation to the Township of Kingwood by, at the option of Frenchtown Run, LLC, either providing rehabilitation units, or by making an in lieu affordable housing contribution to the Township in an amount equal to Thirty-One Thousand, Two Hundred Fifty Dollars (\$31,250.00) per approved lot.”
2. Paragraph 27B shall be deleted.
3. Paragraph 28 shall be deleted in its entirety and replaced by the following: “Frenchtown Run, LLC’s obligation to contribute to off tract road improvements along Horseshoe Bend Road and Springhill Road shall be limited to a liability for contribution of Frenchtown Run, LLC’s pro rate share of all such off tract improvements in accordance with the Municipal Land Use Law and Kingwood Township’s Ordinances. The amount of Frenchtown Run, LLC’s contribution for off-tract improvements shall be determined by agreement of Horseshoe Bend, LLC and Kingwood Township prior to closing.
4. The above amendments to the Settlement Agreement are expressly conditioned upon the closing and transfer of title of the Horseshoe Bend, LLC property to Kingwood Township and Hunterdon County.

It was moved by T. Kratzer, seconded by R. Phillips and carried to adopt the following resolution.

**RESOLUTION #BOH -2008 -01**

**WHEREAS**, the Township of Kingwood has been named as a defendant in four separate lawsuits instituted by Frenchtown Run, LLC and/or Horseshoe Bend, LLC, including two cases in the Tax Court challenging the rollback and tax assessment of three properties which it owns in the Township; and

**WHEREAS**, a separate Complaint has been filed with the Superior Court by Frenchtown Run, LLC and Horseshoe Bend, LLC against the Township of Kingwood and its Planning Board dated March 31, 2006 challenging the Zoning Ordinances of the Township; and

**WHEREAS**, the Well and Zoning Ordinance cases were consolidated by the Court and the parties entered a Stipulation of Settlement which was memorialized in a Settlement Agreement that was approved by the parties and which is attached hereto as Exhibit A; and

**WHEREAS**, it is now proposed that Kingwood Township, together with Hunterdon County, purchase the Horseshoe Bend, LLC equestrian village property;

**WHEREAS**, in connection with that proposed purchase, certain amendments to the Settlement Agreement relating to Frenchtown Run, LLC’s affordable housing obligation and its responsibility for a pro rata share of off tract improvements along Horseshoe Bend Road and Springhill Road are presented for the approval of the Board of Health of the Township of Kingwood; and

**WHEREAS**, the proposed amendments to the Settlement Agreement shall be open for review and consideration to the public for questions and comments prior to a vote by the Board of Health of the Township of Kingwood on this Resolution;

**NOW THEREFORE, BE IT RESOLVED**, by the Board of Health of the Township of Kingwood, County of Hunterdon, that the Settlement Agreement be amended as follows:

5. Paragraph 27A shall be deleted in its entirety and replaced by the following: “Frenchtown Run, LLC shall satisfy its affordable housing obligation to the Township of Kingwood by, at the option of Frenchtown Run, LLC, either providing rehabilitation units, or by making an in lieu affordable housing contribution to the Township in an amount equal to Thirty-One Thousand, Two Hundred Fifty Dollars (\$31,250.00) per approved lot.”
6. Paragraph 27B shall be deleted.
7. Paragraph 28 shall be deleted in its entirety and replaced by the following: “Frenchtown Run, LLC’s obligation to contribute to off tract road improvements along Horseshoe Bend Road and Springhill Road shall be limited to a liability for contribution of Frenchtown Run, LLC’s pro rate share of all such off tract improvements in accordance with the Municipal Land Use Law and Kingwood Township’s Ordinances. The amount of Frenchtown Run, LLC’s contribution for off-tract improvements shall be determined by agreement of Horseshoe Bend, LLC and Kingwood Township prior to closing.
8. The above amendments to the Settlement Agreement are expressly conditioned upon the closing and transfer of title of the Horseshoe Bend, LLC property to Kingwood Township and Hunterdon County.

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

Well Ordinance Amendments (discussion)

J. Kopen provided the following memo to the Board:

1. Issues regarding posting of escrows for water monitoring for existing wells.

Under the existing ordinance, section 153-35(4) and (5) deal with escrow deposits. Under section 153-35(4)(c), which currently reads “Existing lots. An initial escrow deposit of \$4,000 for the first lot and \$400 for each proposed additional lot.” Upon further review, that section should read, “Existing lots. An initial escrow deposit of \$4,000 per lot.”

Under section 153-35(5) “Escrows for rehabilitation and monitoring,” there is not currently a provision that would require an escrow from an existing lot which does not yet have a well, but for which a well is planned. Under the current formulation of the ordinance, escrows are only required as a condition of approval of any subdivision or site plan applications. From my understanding, however, there are numerous existing lots

in Kingwood which have already received subdivision approval, but do not yet have wells. There is, therefore, no requirement for escrows from any such existing lot to ensure the ability to remediate any unforeseen detrimental effects upon existing wells. It is suggested that this problem could be remedied by adding the language “or for any previously approved existing lot which is required pursuant to this ordinance to obtain a well construction permit,” after the phrase, “are to be required as a condition of approval of any subdivision or site plan application” in the third and fourth line of section 153-35(a) and after the phrase “pursuant to section 153-11.g.iii. in the second and third lines of section 153-35(5)(b).

## 2. Expiration of well permit.

It is my understanding that there is a concern because, as currently enacted, the ordinance has no expiration date set for well permits. The origin of this concern is that new regulations may be enacted with more stringent requirements as to wells, and, if a property had already obtained a well permit at some time past, there would be no mechanism for requiring a lot in possession of a permit to comply with new regulations. This would seem to be a valid concern. I believe it was suggested that a one year expiration date be considered. This would appear to be a reasonable time frame, although I would defer to Kingwood’s hydrogeologist to review this suggestion as to whether one year was sufficient time to complete a well in all circumstances, especially given the various considerable fees and escrows that are required to be posted when a permit is obtained. I would also point out that the existing ordinance, in section 153-22 already incorporates various New Jersey statutes and regulations relating to water and wells which, presumably, could be amended to reflect the new regulations that are the Township’s concern. 153-22(2) states that if any conflict between any part of the ordinance or any other applicable code, standard or statute arises, the more stringent standard shall apply. It is arguable, therefore, that the Township could take the position that even those that have an existing permit, should the regulations change and become more stringent before a well is drilled, still would need to comply with the more stringent standards. However, adding language that would cause the permit to expire within a set timeframe would be an additional safeguard.

Other proposed changes discussed were:

- 153-23 C – Map            The Board discussed the option of allowing an individual to locate the wells and septic of the surrounding properties by obtaining as-builts from the County and indicating them on a survey.
- 153-21 – Definitions - Nitrate Dilution Model – New water quality management is requiring 2 mg/l rather than 5 mg/l.
- 153-35 – Fees – B -        Witnessing of pump tests: \$500 should be changed to \$500 per well.
- 153-35 – Fees – D(1) – An initial escrow deposit of \$4,000 for the first lot or dwelling unit and \$400 for each proposed additional lot or dwelling units should be changed to remove the requirement of the additional \$400 for each proposed additional lot or dwelling unit. The requirement could be based on a nitrate dilution model.
- 153-35 – Fees – E(1) – change the wording “\$3,000 in escrow shall be required for each new well” to \$3,000 in escrow shall be required for each new lot”.

153-35– Fees – E(2) - add to the ending sentence “except in the instance where no new well has been constructed on the property, but in no instance shall the money be refunded prior to the expiration of the 12 years from the time that a well is constructed”.

It was moved by M. DeSapio, seconded by T. Kratzer and carried to authorize J. Kopen to contact V.Uhl in regard to the above suggested changes. All members voted **AYE**.

#### *Well Ordinance Summary Sheets*

The following additions/changes were suggested to the summary sheets:

Single Well Owner – Usage less than 800 gpd:

Principal Steps (1) – add “d. Well Construction Permit Application and Checklist, e. Well Permit Fee, f. Pump Test Witnessing Fee”;

(2) (b) – change “200 feet” to “300 feet”.

(3) - add “a. Well Certification Application and Checklist, b. Well Certification Fee”.

Subdivision of 2 lots or more and Single Well Use of equal to or greater than 800 gpd:

Principal Steps (1) – add “Well Construction Permit Application and Checklist, d. Well Permit Fee; e. Witnessing fee for Pump Test”

(4) – add “a. Well Certification Application and Checklist, b. Well Certification Fee”.

The Board requested a copy of the forms as well as the ordinance be provided to the Board members for their review prior to next month’s meeting.

#### **CORRESPONDENCE**

#### **PRIVILEGE OF THE FLOOR**

T. Kratzer inquired if anything has been received from S. McNicol regarding a septic ordinance. M. DeSapio responded nothing has been received.

#### **ADJOURNMENT**

It was moved by M. DeSapio, seconded by S. Stryker and carried to adjourn the meeting at 9:14 PM. All members voted **AYE**.

Respectfully submitted,

*Diane Laudenschach*

Diane Laudenschach, Secretary