

**MINUTES**

**PRESENT:** J. Burke  
R. Dodds  
D. Haywood  
T. Kratzer  
J. Mathieu  
S. McNicol  
E. Niemann  
L. Sensus  
M. Synchron, Alt #1  
A. Clerico, Planner  
T. Decker, Engineer  
D. Pierce, Attorney

**ABSENT:** J. Strasser  
D. Posey

**CALL TO ORDER**

The meeting was called to order by R. Dodds at 7:33 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 Hunterdon County Democrat and Courier News, 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**

Grossman – Block 6, Lots 23 & 23.02 – State Highway 12 – Boundary Line Adjustment – Completeness and Hearing

W. Grossman was present for the application this evening. He stated he resides at 1105 State Route 12, Frenchtown, New Jersey.

T. Decker stated he has reviewed the plans for completeness. The application is complete and a straightforward application.

D. Pierce was in agreement with T. Decker.

It was moved by J. Mathieu, seconded by D Haywood and carried to determine the application complete. All members present voted **AYE** on **ROLL CALL VOTE**.

R. Dodds announced the public hearing portion of the application will now be addressed.

W. Grossman stated he is purchasing 9.86 acres from his neighbor. He wishes to keep the property in farmland assessment.

T. Decker stated both lots will be conforming after the lot merger. He had spoken to W. Grossman regarding the location of the septic system on the front lot. W. Grossman had informed T. Decker the septic was located in the front of the dwelling on the Route 12 side. There were no existing non-conformances and none were created as a result of this boundary line adjustment.

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

It was moved by D. Haywood, seconded by M. Synchronick and carried to approve the above boundary line adjustment application. All members present voted **AYE** on **ROLL CALL VOTE**.

*S. McNicol recused herself from her position on the Board for the following matter.*

Silverson – Block 7, Lot 14 – Oak Grove Road – Continuation of Public Hearing

R. Lorentz, engineer, P. Althoff, consulting geologist and L. Tubman, attorney, were present for the matter this evening.

R. Dodds announced the continuation of the public hearing was requested on November 2, 2009 by letter from J. Silverson to December 8, 2009, when all the well testing would be completed.

L. Tubman of Archer and Greiner stated the application for the property in question, Block 7, Lot 14, was before the Board in February of 2009. At the time of the hearing, the Board had two concerns. The concerns were the location of the stream corridor riparian buffer and the applicable stormwater rules of the C1 buffer. The Board requested a jurisdictional determination. The applicant received the jurisdictional determination on June 23, 2009. L. Tubman provided a copy of the determination to the Board members. She stated it was the finding of the DEP that the activity as proposed on the site did not create any regulatory obligation. No permits were necessary. She stated R. Lorentz has made a minor change to the plan.

R. Lorentz stated, on page 2, as per the discussion in February in regard to tracing the location of the 300' C1 buffer as well as the 300' riparian zone associated with the stream traversing the property and impact on the Silverson tract, there was a concern of the strict measurement of the 300' from the stream, which brings the buffer into the westerly 25' flagstaff on proposed Lot 14.18. The applicant originally recognized the impact of the buffer on the flagstaff but they wanted to wait for the jurisdictional determination to see the extent of the impacted area. The DEP in their review determined the area of concern was in the limitation of the disturbance of the riparian zone. It was previously disturbed in the prior development on Lot 14.04 and the use of the property. DEP suggested the applicant shift the driveway to avoid the riparian zone. The applicant presented the DEP with a plan that rerouted the drive to the current proposed location. The above change was the basis of the statement that was issued in June by the DEP.

D. Pierce marked the Flood Hazard Determination Letter as Exhibit A-1 and the revised plat as Exhibit A-2.

R. Lorentz stated on sheet 3 of 3 the detail of the proposed common driveway is shown at a larger scale as well as the location of the buffer line which encroaches into the westerly flag access staff. It also shows the

relocation of the driveway into the easterly staff to a point just beyond the small stable building, shown on the plat to be removed. The driveway then by a gentle curve goes to its original alignment and proceeds to the back. There is very little change in the grade or profile. There is a 10' shift in the alignment.

D. Pierce indicated since it will be a common driveway, a joint maintenance and access agreement will be required.

R. Lorentz stated the applicant is prepared to have a joint maintenance and access agreement. He stated the application is a conforming Class II subdivision and the changes made have not changed the parameter of the subdivision.

L. Tubman stated during the hearing in February there were some technical comments in regard to the well testing. The applicant chose to comply with the recently amended ordinance which required well testing for this type of subdivision. P. Althoff is present to address the testing.

D. Pierce indicated Sheet 3 of 3 is marked as Exhibit A-2. The last revision date for that sheet was June 9, 2009.

D. Pierce swore in P. Althoff.

P. Althoff presented her credentials to the Board. She is accepted as an expert witness at the federal, state and local levels.

P. Althoff testified the testing was done in accordance with the township ordinance. The preliminary report was prepared with the proposed well locations and submitted to V. Uhl for change or approval. V. Uhl approved the well locations and the surrounding property owners were noticed. There were 18 residents who were willing to participate. The applicant chose the three nearest to the property, McNicol, Hallgring and Walker residences. The information was provided in the preliminary hydrogeological report and pumping test plan. The wells were drilled. 72 hours of background monitoring of the two offsite wells and onsite wells was conducted to determine the interference when those residents used their wells. Recovery to 90% was within 30 minutes. The monitoring equipment remained in the wells for another 72 hours. There was an analysis of the data included in the final report. The applicant pumped at 5 gpm for 8 hours, which is more than the peak daily demand for the subdivision. Water samples were collected at the end of the test, analyzed and passed the DEP requirements, except for coliform and arsenic. The two contaminants can be easily removed by in-house equipment. V. Uhl reviewed the report and requested some additional information with regard to the dilution model. She stated she had provided the information in the pumping test plan. V. Uhl and herself obtained similar results and were in accordance to the ordinance. The applicant has met the ordinance requirements. She described the dip and strike of the beds. She stated shallow water will move towards the stream and deep ground water will move towards the Raritan River. She stated the fluctuations in the chart indicate water usage by the resident as well as possibly a the neighboring property. The nitrate dilution is under the two parts per million. She obtained her 20% to 25% recharge from the Haig Kasabach, Geology and Ground Water Resources of Hunterdon County.

D. Pierce stated P. Althoff's correspondence to V. Uhl is marked as Exhibit A-3.

L. Tubman stated the applicant is aware of the structures that straddle the property line. To the extent of the applicant's property, the structures will be removed. There is one building that runs over the property line and the half on the neighboring property cannot be removed by the applicant. The final issue is the COAH fee. For the proposed subdivision and per the Township's submission to COAH of their Fair Share Plan and Housing

Element, the subdivision does not generate the need for a COAH unit but a charge of 1.5% of the improvement values, which will be paid half at the time of the issuance of the building permit and the other half at the issuance of the Certificate of Occupancy.

R. Dodds called for comments from the public.

S. McNicol, Oak Grove Road, stated R Dodds has a CD that she will be referring to in her testimony. She stated she had some concerns with the upper rivulet of this plat and the location of the septics. She is concerned about the proposed septic on Lot 14.18 which has been sited in a natural channel that drains into the Nishisackawick Creek. She referred to the photograph on the CD which was dated 1963. The same rivulet was present. The photograph shows the drainage flows from the top of the property all the way across and down into that area. It was vegetated in 1963. In the 1988 photograph, which is a historic aerial, you can see the farmer was farming the area. It indicates the drainage all the way across and down into this area. If you review the aerial photo, you can see it still exists today. There are approximately 30 years of forest in the area. Reviewing the plat, you can see the septic system is situated in a natural drainage area. The application indicates a septic pipe pumping 200' from the proposed home, up gradient, through shale to the potential site. The 200' is approximately the width of telephone poles on a street and the front property line of a two acre lot. It is quite a distance to pump up hill to a septic field. She is concerned about the potential with a pipe breaking and draining through the shale and polluting the well on Lot 13.01, which is down stream of it. It also has the potential to degrade surface water standards. The Township, historically, has had septic failures. She is working of a project for the Township collecting data of septic failures. The data is very revealing. In the first quarter of 2008, there were a number of septic failures. In 2008, there were 14 repairs and 7 alterations. A repair would include a "D" box or lateral replacement. An alteration would most likely mean the entire system is replaced at a cost of approximately \$30,000. She has reports from the Hunterdon County Health Department for the entire year of 2008 and the first three quarters of 2009. The reports show problems through the years and should be considered whether the septic system should be placed where it is proposed. In 2009, which has been a slow year for real estate sales, there have been 6 repairs and 3 alterations. She is bringing the data to the attention of the Planning Board since they are proposing approval of the septic system. The Little Nishisackawick Creek drains into the Delaware River, which has been labeled as a Wild & Scenic River. This creek is part of the problem causing the flooding, when there is flooding, along the Delaware River. The Little Nishisackawick Creek flooded the post office in Frenchtown. In regard to the riparian zone, she is not certain it has been represented properly by the particular delineation. She has provided the DEP photographs taken over the years of the "y" rivulet. She indicated in her letter to the DEP that state open waters may apply to the rivulets. She wrote them letter on December 4<sup>th</sup> to review the area. She has obtained a copy of the submission made by the applicant to the DEP. The reason for her request for further review by the DEP is that the flow comes all the way across the property to the back and extends much further than the "y" indicated on the plat presented to the DEP. There is another septic sited in the right upper corner which has obvious flow to a tributary of the Little Nishisackawick Creek. An additional reason for her request for further review by the DEP is to find out the location of the riparian zone. As per the State Open Water Act, open waters require a 2' width. If a gully is 2' wide and 6" deep it is considered open waters and possibly a riparian zone. There are two septics, in her opinion, that are questionable in their location. They might have tested fine but the Township has had many failures. When talking about a C1 stream, it protects the Delaware River and provides drinking water. The DEP spoke about the Little Nishisackawick Creek not draining 50 acres. One of their requirements for the riparian zone is that it has to drain 50 acres. When she reviewed the Huc14 map and the sub-water shed along the Huc11, it quite easily drains more than 50 acres. It drains properties on the south side and in the photographs she submitted to the DEP, there are drainage issues on the road coming off of various properties. She asked the DEP to provide some guidance on the issues. The Environmental Commission has sent a letter to the DEP with some questions. The applicant's Flood Hazard Applicability Determination

referred to a plat. The applicant has delineated the riparian buffer, the C1 stream course and the 300' buffer. The "y" rivulet is following the C1 stream and she is concerned that the buffer should be extended out which would impact the drive. The stem is less than 50' in from the road and quickly turns and goes up. She cannot see how emergency vehicles can have access. In regard to the line of sight, there is a hill and the line of sight is poor. With the new activity and the hill, line of sight should be considered. It is not located in a good location. Core samples should be done to see if the infiltration trench will work. She stated the name of the creek is still incorrect on the submission to the DEP. The revised plat and information should be on file with the Township so everyone can review it. Since the DEP did require the relocation of the driveway, the plat should be on file so its location can be verified. She is requesting the Board to consider the concerns she has brought before them this evening. The official at DEP reminded her that on any residential site improvement, such as a septic, the Township has final decision on whether to approve or not and have the right to ask it to be relocated. She stated the Board should not approve the application until the Township has received final approval of the riparian zone from the DEP.

D. Pierce marked the map provided by S. McNicol as Exhibit M-3 and the CD as Exhibit M-4.

R. Dodds stated before anyone else comes up and offers testimony and addresses other concerns, he is requesting the applicant respond to the Ms. McNicol's concerns.

L. Tubman stated the property has a Letter of Interpretation issued by the Land Use Regulation. It identifies all the wetlands and open lands. It is an outside agency approval and has been filed with the Township. The applicant has obtained acceptable septic results. The Flood Hazard Act Rules and the stormwater rules, which grant the largest area of protection allowed by law, have been reviewed by the appropriate outside agency. The applicant has been given the determination. The septic testing and design have or will be reviewed by the Hunterdon County Health Department. Each lot will be the subject of an individual development plan. The plat does not show the exact location of the houses but typical possible locations. The applicant has addressed the critical, water and DEP regulatory issues. The application is a conforming Class II subdivision.

R. Lorentz addressed the sight distance. The sight triangle is intended to set aside an area where no sight encroachments can be installed or if there are any now, must be removed. There is existing fencing that will be removed. As to the physical sight distance sitting on the driveway apron, it is at least 200' that the road continues to rise slightly so that any vehicle east of the property line would be clearly and fully visible beyond at least 100'. It is his position adequate sight distance does exist and will be preserved by the feature. In strict accordance with the Township Ordinance for a Class II subdivision, the access to this lot should be limited to the first 50'. The applicant would prefer more flexibility based on the current conditions to allow access further back on the property which will lessen the impervious surface being created and allow better accessibility for emergency equipment. In regard to the creek's name, he can find nothing showing a name of the water course that traverses the property. It is only referred to as a tributary. S. McNicol is correct that it is the Little Nishisackawick Creek.

L. Tubman stated the name can be indicated on the plat.

R. Lorentz, in regard to the location of the septic systems, stated there is a slight swale which carries some surface water flow. The topography does not give a totally clear picture. There was no water infiltration to 10' in the one nearest the constrained area and some ground water was encountered within the excavation at an extended depth of 8' on the second. It would be a relatively conventional system. He does take issue that it would be pumped up to the disposal area. It is likely the area is some 8'-10' lower than the house location shown on the plat. It will be a gravity system and possibly elevated out of the ground. There will be surface

diversion of any surface water which will ultimately find its way back to its natural pathway. The two swales were a specific part of the DEP's investigation. In contacting the person in the department who did the original LOI and field investigation, the nearest part of this septic system is probably 100' from the 300' buffer and 400' from the stream, which is clearly identifiable as a water course. In response to an inquiry from a Board member, he responded he is testifying the location is conforming.

L. Tubman responded to the definition of a water way as being 2' wide and 6" deep. She stated the definitions are in the Freshwater Wetlands Protection Act and the Flood Hazard Protection Act. She has not reviewed it specifically but the applicant has obtained an applicability determination.

P. Althoff testified the swales are not state open waters. They are not fed by ground or perched water. They are fed by runoff. The elevation of location of the test is 20' higher than the stream, which is fed by perched water. If the swales were fed by perched water, they would be flowing all the time. They do not flow unless there is runoff. When reviewing fresh, ground and surface waters, the source that flows through those swales is surface water runoff. The leach from the septic system is not supposed to be surface water. The water percolates into the ground until it reaches a perched water table or deep water table. It will not flow into the swale. It is almost 100' away from the head of the defined swale. The swales were formed along the major joint system, where the rock is weaker and the ground eroded. They are not open water.

P. Althoff explained how joints come into play. The water starts to percolate down and when it hits one of the bedding joints, in a good soaking rain and percolating a lot, it will overcome some of the surface tensions. It moves towards the stream and hits one of the major joints. A lot of it might make it over the joint and continue to the stream. If it is a late rain event, maybe none of it will make it to the stream but to the deeper joints. It is very complicated and not simple. Joint systems are caused by structural movement of the rock which breaks the rocks. Perched conditions are indicated in this stream. In this area it might be perched but farther down not perched. You can go from perched to not perched areas. In this area, the wells are deeper than the water level in the stream. The nitrate dilution model is from GSR32. With a very general figure of 20-25%, it is based on large basin evaluations on how much rain fall and how much is discharged into the big rivers. With GSR32, there have been extensive studies and fine detailed soil testing which have resulted in better recharge numbers. Her computations have been done on GSR32 model. Any number could be put in there to make the lots larger or smaller. GSR32 has the most scientific or documented numbers and is a state publication.

L. Tubman stated the Township's expert concurred with the nitrate dilution.

R. Lorentz stated the septic designs will be submitted to the Hunterdon County Health Department for approval. The wells are now set on the two back lots.

L. Voronin commented on the recharge and that the DEP has made up maps on the entire state on recharge. P. Althoff responded she has reviewed the maps and they are of a more general nature. She has reviewed the soils on the property to obtain her figures. L. Voronin further stated the DEP recharge figures are 6-8" per year. P. Althoff responded the DEP figures are a general planning tool for boards and citizens. GSR32 is area and site specific and takes into account the soils and climate to determine recharge. L. Voronin stated the maps are more recent and based on that data. They are more detailed and should be compared. P. Althoff stated she disagrees and that GSR32 is much more detailed than the DEP map, which is a generalization. P. Althoff stated she has used the prescribed and recommended method to compute recharge rates and they were utilized by the Township's professionals also. L. Voronin stated she has a concern about the septic systems. If you review the contours, you are directing the stormwater runoff to the septic systems, flooding them and flushing whatever is in the system downward. R. Lorentz stated he did not agree with L. Voronin's statement. The septic system is

made or designed to be isolated from the water runoff. There is a small diversion which will push the surface water around the system and then allow it to get back into the broader system. The water will not infiltrate the system itself. The diversion is so slight it might result in a little bit of grading. The contours are at 2' intervals, which result in 7 or 8%. There is no problem with designing a system with a 15% slope. A system gets designed with at least 4' of select suitable fill beneath the basic disposal bed to allow the water to traverse vertically. There might be 6-8' of that material before it is introduced into the perched water level. There are studies that show purification occurs within 2-4' of that material. There is no problem beyond that. The systems will be fill enclosed with a 2' band of fill completely surrounding the disposal area.

T. Decker stated there is always a potential for septic failure. The County reviews the septic designs and if a septic was placed in a swale without the diversion swales, it would not receive approval. It is very common to have two swales on either side of the septic bed. Even if the system is moved to another location, you do not want to have surface water going into the septic field.

E. Schmid – Tumble Idell Road – stated in Franklin Township during hurricane Floyd, there were a number of well pollutions in houses with newer septic systems. There was a lot of surface type water. The hydrogeologist stated the two events were related to each other. She inquired if you are placing a septic in an area that has some water runoff in rain, what would happen in a significant rainfall? Would it threaten the wells? T. Decker responded there is a potential for anything. Hurricane Floyd was a catastrophic event. Under normal situations the proposal by the applicant is not unusual. E. Schmid inquired if the arsenic contamination will be noted in the deeds to the landowners. L. Tubman responded the buyer and seller will have to sign off that they have seen and understand the well test.

S. McNicol inquired about the measurement of the groundwater at the septic location. P. Althoff stated she did not measure the groundwater. The Board has to consider a worst case scenario. She still feels the DEP did not provide proper riparian zone delineation for this project. She is requesting the Board wait until the DEP makes a determination on the additional information provided to them on their determination.

T. Decker stated the definition of a tributary used to be if you had a drainage area of 50 acres or more it was a tributary. Now it is a defined channel. It gets a little difficult to interpret. The application was requested to obtain a determination from the DEP, which they have provided to the Board. DEP classifies tributaries as farmer's ditches and as state open waters with a 300' buffer. There are other areas where there is water in it and it is not classified as a tributary. Regarding the septic testing, it would not be his first choice or probably R. Lorentz' but the requirements of subdivision is to demonstrate suitability on the lot. The septic field is within 15' of those logs. Once they go through the individual lot design, they might go for additional testing to shorten the length.

In response to a question by a Board member of how to proceed where the applicant has supplied the Board with the jurisdictional authorities' approvals, D. Pierce stated the Board would have great difficulty disregarding the determinations by the various agencies that have exclusive authority over these issues. The wetlands and riparian zones are under the jurisdiction of the DEP. It is not the Board's function to second guess the appropriate approving agencies. Case law provides that when an applicant comes in with an application that conforms to the regulations, the Board would be acting capriciously and arbitrarily if they deny the application. Since the applicant has received a determination, it exempts him from any new regulation. If the DEP determines that some information was withheld or mischaracterized in the initial application, they can rescind their approval or make the applicant subject to additional requirements.

R. Dodds closed the public portion of the hearing.

It was moved by J. Mathieu, seconded by J. Burke and carried to approve the above application with the following conditions:

1. The approval by the tax assessor of the proposed Lot numbers.
2. The submission of a Plat revised to show:
  - The proper delineation of the 300 foot Special Resource Protection Area;
  - The relocation of the proposed driveway to demonstrate that it is not located within the Special Resource Protection Area;
  - Compliance with items 4, 5, 6, 8, 9 and 11 of the February 9, 2009 letter from Thomas Decker, P.E. of Gilmore & Associates, Inc. to Diane Laudenbach;
  - An revised and accurate “Constrained Area and Lot Yield Calculation”;
  - The revision of the name of the tributary to show “unnamed tributary to the Little Nishisackawick Creek”;
  - Revisions to the proposed common driveway to conform to the conditions shown on Exhibit A-3.
3. The applicant shall obtain a permit for installation of the proposed common driveway and complete installation of the common driveway prior to the issuance of a building permit for any of Lots 14, 14.18 and 14.19.
4. Recordation of a common driveway use and maintenance agreement that is subject to review and approval by the Board’s professionals.
5. Review and approval by the Board engineer of all construction details for compliance with stormwater management requirements.
6. Revision of the deeds for Lots 14 and 14.18 to include restrictions requiring those lots to access the public road through the common driveway to be located on Lot 14.19.
7. The incorporation into the deed for Lot 14 of a restriction limiting the size of the dwelling to be located on Lot 14 to not more than 3000 square feet of habitable floor area.
8. Recordation of sight triangle easements, as depicted by the Plat and subject to review and approval by the Board’s professionals.
9. Removal of that portion of the barn, shed and stable on the applicant’s property identified on the Plat as “to be removed” prior to the issuance of a building permit for any of Lots 14, 14.18 and 14.19.
10. Revision of the deed for Lot 14 to include a restriction requiring the turn off from the common driveway to access Lot 14 to be located more than 50 feet from Oak Grove Road and to be installed at an angle that will permit easy access by emergency vehicles.
11. Installation of a treatment system for all potable wells on the Lots.
12. Review and approval by the Board’s professionals, and recordation, of appropriate conservation easements, including both a metes and bounds description and a graphical depiction of the area and noting that it is 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 easements.
13. All conservation easements shall be delineated in the field prior to the issuance of any building permit by the installation of markers in conformance with Kingwood Township ordinance requirements with respect to the location, type and installation of the markers.
14. Prior to the issuance of any building permit, the applicant shall submit a baseline documentation report for all conservation easements documenting with photographs the installation of the boundary markers and the condition of the easement areas.

15. 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 development fee ordinance requires a developer, pursuant to 132-13 of the Kingwood Township Code, to pay a development fee to the Kingwood Township Affordable Housing Trust Fund. The applicant shall pay fifty percent (50%) of the estimated developer's fee to the Kingwood Township prior to the issuance of building permits based on the Tax Assessor's estimated assessed value and his determination of the appropriate developer's fee. Building plans and as-built building plans for each development subject to payment of the developer's fee must be provided to the Tax Assessor and the remaining portion of the developer's fee shall be paid at the time of issuance of a Certificate of Occupancy for the new development. This paragraph does not constitute any determination by the Board as to whether the applicant is required to pay a developer's fee.
16. Satisfaction of all requirements of the Kingwood Township well ordinance prior to the issuance of any building permit, including the issuance of a well certification for each potable well and the posting of all required escrows.
17. Submission to, and approval by, the Board Engineer of septic, grading, dwelling and stormwater management plans for each lot prior to the issuance of a building permit for that lot.
18. Receipt and submission of unconditional Hunterdon County Planning Board Approval.
19. Receipt and submission of unconditional approval from the Hunterdon County Soil Conservation District.
20. The applicant shall confer with the Township Committee and the municipal engineer and agree upon the amount of the applicant's off-tract improvement contribution, if any, and a cost estimate for public improvements.
21. 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 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.
22. 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.
23. The applicant shall not deviate from or alter 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.
24. All improvements shall conform to building standards and other regulations as set forth in Federal, State, County and Municipal Statutes, Regulations, Codes and Ordinances.
25. 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.

26. In the event this applicant sells or otherwise transfers all or part of this project to any other developer, assignee, person or entity, the escrow accounts and Bonds posted by the applicant herein, shall not be released in whole or in part, until the successor developer, assignee, person or entity has fully replenished review and inspection escrows in the amounts originally required or such reduced amount as may be approved by the Township Attorney and Chief Financial Officer, posted replacement Bonds and countersigns the existing Development Agreement, (if any) as directed by the Township Attorney.

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

*S. McNicol resumed her position on the Board.*

### **Community Visioning Survey – Cost**

It was moved by J. Burke, seconded by D. Haywood and carried to approve an additional \$200.00 for the printing and mailing of the Community Visioning Survey. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Buildable Area Requirements**

D. Pierce provided the following memo to the Board:

During the recent hearing for the cluster subdivision on the Perrotti property, an issue was raised regarding the required minimum buildable area for a new lot. During that application, the applicant requested, and was granted, a variance from the required minimum buildable area for one of the proposed lots. During the discussion surrounding that variance, it was noted that smaller lots would mathematically be precluded from providing the required one acre of minimum buildable area.

A review of the Kingwood Township Code reveals an inconsistency in the Code requirements and a need to amend the Code. The portion of the Code relied upon by the applicant in the Perrotti matter was the Schedule of Lot and Building Requirements for AR-2 Districts which is attached at the end of Chapter 132 of the Kingwood Township Code. That Schedule of Lot and Building Requirements is a table which sets forth, with respect to detached single-family dwellings, that the required minimum buildable area is one acre. This provision, however, is inconsistent with the definition of minimum buildable area contained in Section 115-3 which was previously modified to address the fact that it was not possible for a small lot to mathematically generate one acre of buildable area. Section 115-3 defines buildable area as “a contiguous area of land located within the building envelope of a lot which does not contain any constrained areas and which is equal in size to the lesser of one-half of the area of the building envelope or one acre.” The building envelope is defined as “the area of land located within the applicable principal building setback lines of a lot.” Thus, the definition of buildable area contains a reduced requirement for lots which cannot mathematically generate at least one acre of buildable area within the building envelope.

In order to avoid confusion and misunderstanding in the future, he recommends that the Township amend the schedule of lot and building requirements by deleting the number 1 and replacing it with the phrase “See Note 4

below” and by adding Note 4 which would state “the lesser of one acre or one-half of the area of the building envelope.”

The memo was generated due to a comment made by A. Belle stating it is not possible to have the required building area on a 2 acre lot.

### **Habitable Attic Space and Attic Definitions**

Banisch and Associates provided the following memo:

The purpose of this memorandum is to provide the Board with additional information regarding definitions of Class I and Class II minor subdivisions and the maximum house size limitation of 3,000 sq. ft.

On November 10<sup>th</sup>, the Planning Board seemed to agree on the following:

1. The intent of the maximum house size limitation is to manage the scale of new homes on smaller lots in minor subdivisions so that resulting construction would contribute to a greater diversity of moderately priced housing stock in the Township; and that limiting the size and proportion of a home to 3,000 sq. ft. in size is appropriate to lots that are less than 4-acre in area.
2. A clarification of the existing ordinance definition of Habitable Floor Area is needed to more accurately reflect the intent of limiting a home to 3,000 sq. ft. “in size”.
3. An amendment to the existing ordinance definition of Class I and Class II minor subdivisions regarding maximum house size should read as follows:  
“The lots that are less than four acres in size shall be permanently deed restricted to limit the size of the dwelling to be constructed thereon to not more than 3,000 square feet **in habitable floor area, exclusive of basements or cellars.**”

Following the Board’s November 10 discussion, a question was raised about living spaces in attics. It was suggested that the issue of attics be addressed in the ordinance to address the situation of attic space that may be habitable.

The following two definitions for “attic” and “habitable attic space” are found in “The Latest Illustrated Book of Development Definitions”, Harvey Moskowitz and Carl Lindbloom, Center for Urban Policy Research, 2004, as follows:

- **ATTIC**: That part of a building that is immediately below and wholly or partly within the roof framing.
- **HABITABLE ATTIC SPACE**: Habitable Attic Space is an attic that has a stairway as a means of access and egress and in which the ceiling area at a height of five feet above the attic floor is less than 40% of the floor below. Habitable Attic Space is served by a heating system and includes attic space that may be used for living, sleeping, eating or cooking, as well as bathrooms and toilet rooms. Unheated storage and utility spaces are not considered Habitable Attic Space.

To include habitable attic space in the calculation of maximum house size, we recommend adding these two definitions with a modification to the above-referenced definition of Habitable Attic Space, as provided below.

- **HABITABLE ATTIC SPACE:** Habitable Attic Space is an attic that has a stairway as a means of access and egress and in which ~~the~~ has ceiling area at a height of five feet or more above the attic floor ~~is less than 40% of the floor below.~~ ~~Habitable Attic Space~~ and is served by a heating system and includes attic space that may be used for living, sleeping, eating or cooking, as well as bathrooms and toilet rooms. Unheated storage and utility spaces are not considered Habitable Attic Space.

We believe that removing the reference to “40% of the floor below,” and retaining a reasonable ceiling area standard (i.e. 5’), an attic that is heated and occupied as habitable space can be easily counted toward the maximum house size limitation.

In addition to the two recommended ordinance definitions above, we also recommend that the Board consider an additional amendment to the current definition of Class I and Class II minor subdivisions with a maximum house size limitation of 3,000 sq. ft. in size to read as follows:

“The lots that are less than four acres in size shall be permanently deed restricted to limit the size of the dwelling to be constructed thereon to not more than 3,000 square feet **in habitable floor area, exclusive of basements or cellars, but inclusive of habitable attic space.**”

It was moved by J. Burke, seconded by J. Mathieu and carried to make a recommendation for an ordinance change to the Township Committee to include the definitions of the following:

Buildable area  
 Definition of Attic  
 Definition of Habitable Attic Space  
 Basement/Cellar and subdivision definition of Class I and Class II subdivision.

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

R. Dodds thanked T. Decker for a wonderful year.

### **Service Acknowledgement**

R. Dodds indicated E. Neimann, J. Burke, D. Posey and T. Kratzer’s terms are expiring at year end. He thanked them for the energy they have put into the matters before the Board this year.

### **Re-Organization Meeting – Schedule – January 12, 2010**

E. Niemann stated the insurance company has some new protocols and resources. Also, she would like to inform the Board of municipal procedures. It will be a 30-minute presentation at the maximum.

It was moved by D. Haywood, seconded by J. Burke and carried to schedule the Re-Organization meeting on January 12, 2010, beginning at 7:30 PM. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Approval of Minutes**

It was moved by J. Mathieu, seconded by D. Haywood and carried to approve the Minutes of November 10, 2009. All members present voted **AYE** on **ROLL CALL VOTE**.

**Resolution No. 2009-25 – Farmland Preservation Plan**

A. Clerico stated she received a couple of comments from the state. Most of their comments were editorials. They have our plan on their agenda for Thursday evening's meeting.

D. Pierce stated the changes were editorial and not substantial.

It was moved by J. Burke, seconded by J. Mathieu and carried to adopt Resolution No. 2009-25. All members present voted **AYE** on **ROLL CALL VOTE**.

R. Dodds thanked A. Clerico for a wonderful year.

**APPLICATION STATUS**

**CORRESPONDENCE**

NJ Planner

**PRIVILEGE OF THE FLOOR**

E. Niemann stated, as a Mayor's privilege, she wanted to thank all of the members. She stated R. Dodds, as a newcomer, did a good job chairing the Board this year and providing the Board with the ability to enhance the presentations. She wished Happy Holidays to all.

**ADJOURNMENT**

It was moved by J. Burke, seconded by M. Syrnick and carried to adjourn the meeting at 10:35 PM. All members voted **AYE**.

**Respectfully submitted,**

**Diane Laudenschick, Secretary**