

The meeting was opened by **Ron Palmieri**, Chairman,

**Mr. Palmieri** read a statement of compliance with the New Jersey Open Public Meetings Law as follows:

*This is a regular meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meetings Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the Asbury Park Press and The Coaster.*

**Mr. Palmieri** then led the meeting in a salute to the flag.

Present: Messrs. Palmieri, Slazyk, Lomangino, Moafi, Battista, Rickert, & Porzio

Absent: Messrs. LaValle and Roche

Also present: Mr. Feist, Board Engineer  
Mr. Rauch, Board Engineer  
Ms. Gruel, Board Planner  
Mr. Hirsch, Board Attorney  
Mr. Gotfredsen, Board Secretary

**Mr. Palmieri** then read a statement of procedural guidelines.

Mr. Palmieri stated for the sake of the meeting record that Matt Diamond, Board member, had chosen to resign for health reasons and there was once again a vacancy on the Board.

KAY REALTY, LLC	BA 2008 – 21
1989 JUMPING BROOK ROAD	BLOCK 128.03 LOT 35
USE VARIANCE FOR OFFICE BUILDING	
<b>CARRIED FROM JANUARY 3, 2008</b>	

**Mark Aikins**, attorney for the applicant, came forward.

**Mr. Aikins** reminded the Board that it had asked him to provide proof that there had been proper correspondence with neighboring property owners with regard to trying to purchase or sell available property. I submitted that information to the Board Secretary and to Mr. Hirsch. I know that was the Board's concern. I think we've been able to demonstrate obviously that we made good faith efforts and that there was not an interest one way or another with regard to our client's property. In every other respect, I believe we had concluded our case. I think the matter had been closed and just subject to that verification. So, with that, I think I will just say thank you for your consideration of the application. I don't know if the Board has any other specific questions but at this point, we had rested, subject to just providing that information.

**Mr. Palmieri** said if I'm not mistaken we had already closed the public portion. Am I correct, Doug.

**Mr. Aikins** stated Mr. Chairman, the only thing I wasn't sure of was if Mr. Slazyk and Mr. Moafi might be eligible to vote by having listened to the tapes. I'm not sure if either one of them was present at the last hearing.

**Mr. Palmieri** advised yeah, we have signed affidavits that they have listened to all the testimony related to the case.

**Mr. Aikins** replied very good. Thank you.

**Mr. Hirsch** said, to confirm what counsel has indicated, I did receive, as the Board did receive, the additional documentation requested. In light of that, I would just ask is there anyone in the audience who might be an adjoining property owner who received copies of letters about potential interest in purchasing additional property. Yes. Just come up to the microphone, please.

**Shirley Vitt**, owner of Lot 34 next door, came forward and identified herself.

**Mr. Hirsch** asked did you get a new notice. No, you previously received that letter quite some time ago.

**Ms. Vitt** replied that letter was sent to me...the date was December 27<sup>th</sup> and I believe I called and left a message probably December 29<sup>th</sup> or 30<sup>th</sup>, however long it takes for the mail to come in. I was asked in that letter if I was interested in buying part or all of the property. The property is very narrow so I cannot sell part of it and my cousin, this is my aunt and uncle who own the property next to me...she was the one that told me that they were offering \$75,000 for the land and the building. I had promised the two neighbors that I would let them try to buy first because it is a neighborhood and they have children nextdoor...so I wanted to give them the first chance to buy the place.

**Mr. Hirsch** said alright, let me just stop you before you go too far because we don't have you under oath or anything. I just wanted to see if it was going to be necessary to re-open the hearing and take any additional testimony. The point is that you indicated to the applicant you were not interested in selling any portion of your property.

**Ms. Vitt** stated that's correct because I promised to...

**Mr. Hirsch** interrupted saying we don't need to know the reason. That's the only thing we need to know...

**Ms. Vitt** continued but I would be interested if they don't buy, to sell but it has to be a reasonable offer. \$75,000 for land and building...and that was a direct offer from them... is not a reasonable amount.

**Mr. Hirsch** stated ma'am, you can't have it both ways here. I just want to know...did you indicate to the applicant you were not willing to sell any portion of your property at this time.

**Ms. Vitt** replied I left a message on the machine. That's correct.

**Mr. Hirsch** said that's all I need. Thank you very much. Okay. Is there anyone else that received any notice from the applicant about the sale or purchasing any additional property contiguous to their land. No.

**Mr. Slazyk** stated I've got one little question. Yeah, I understand that she said no, she didn't want to sell it. She wanted to offer it to her adjoining neighbors. I mean there's nothing else that she wants to say.

**Mr. Palmieri** said I guess at this point the offer was made. It was rescinded and we're done at that point. To go beyond that, I don't think you can.

**Mr. Hirsch** stated neither the applicant nor the Board is under an obligation for people to make other offers, to sell property, to wait 3 month, 6 months. There was an offer. There was a letter. Either they're interested now or they're not. They can do whatever else they want to do with the property.

**Mr. Slazyk** said I'm clear.

**Mr. Palmieri** stated okay, seeing that there's no other parties that need to come forward...

**Mr. Hirsch** interrupted saying the only reason I brought that out was because of what was left open at the last meeting...was this question of notice and that other property owners had the opportunity, enough time to see those letters and to make a decision whether they were going to contact the applicant and indicate they had any interest in selling. That's the only reason...I want to be fair to the public to give them, in case there was some response from the meeting...some of the Board members were concerned about the amount of time based on the date of the letter and the date of the last hearing. So that's the only reason I opened that up as much as I did. Other than that, the hearing as Mr. Aikins had indicated was closed and he had rested his case and we had given the public the opportunity to make whatever comments they had on the application.

**Mr. Palmieri** said alright, now that the public portion of the application is closed, do the Board members have any discussion or need any information on what we're doing with this application..

**Mr. Lomangino** stated Mr. Chairman, I was just going to ask you, could you go over for the Board exactly what we're voting on tonight because I just want to make sure all we're voting on is the use...

**Mr. Slazyk** said we got a new report. We got a lot of new stuff.

**Mr. Hirsch** said what else new do we have.

**Mr. Slazyk** stated I don't know. This drawing came to me January 23<sup>rd</sup>. That was after the fact.

**Mr. Hirsch** said let's...I note so we should be clear...that I'm looking at a report from our planners, Heyer and Gruel dated January 30, 2007. Have you seen that report.

**Mr. Aikins** stated that's part of your record.

**Mr. Hirsch** said I understand but have you seen that.

**Mr. Aikins** advised I've seen the report. Yes. And there's also an Engineer's updated letter as well. Certainly a lot of the issues would be reserved for the site plan portion.

**Mr. Hirsch** said I understand it's bifurcated just on the use variance. I understand that. As Mr. Aikins indicated, there's a February 4, 2008...also a report from Feist Engineering, an updated report. Mr. Slazyk, you also mentioned we have a new plan.

**Mr. Slazyk** stated the drawing I received on January 23<sup>rd</sup>...it's stamped January 23<sup>rd</sup>.

**Mr. Palmieri** said I don't even think this was offered in as evidence yet though. It's got a revision date of January 21, 2008.

**Mr. Hirsch** asked what was that.

**Mr. Aikins** advised the Planner had asked us to square away a couple of the details. I think that's referenced in his letter.

**Mr. Palmieri** said because obviously on this plan, the positioning of the buildings is different than...

**Mr. Aikins** replied pursuant to the Planner's request. His letter acknowledges that. His letter to the Board acknowledges that.

**Mr. Palmieri** said just so the Board knows the vote tonight would be just on the use variance. And then, depending on how the Board feels about it, then we move to the next stage as far as looking at the site.

**Mr. Hirsch** asked does the Board want...I mean we do have the Planner's January 30, 2008's report. To the extent and I don't remember if we voted to close the public portion. I don't know if we left it open because we still had that one issue. You know, we're certainly free to hear from our Planner...you know, if you want the Planner to go through the report that's to be issued. I mean you have the report. You can look at it. If

you have any questions or you have their planner...if you'd like her to discuss the report. Feel free and the same with the Engineer's report. If there's any additional information you want to hear from our engineer as to the report that's been supplied to you, don't feel that you don't have the ability to do that. You do.

**Mr. Lomangino** asked Mr. Hirsch, say the vote, the Board's vote, says the use variance is okay. We can question all of that during the next hearing stage. Right.

**Mr. Hirsch** stated when you say all of that, if there's site considerations here, yes. If the use variance is approved, one of the conditions, at least, will be subject to subsequent approval of a site plan to be submitted.

**Mr. Lomangino** said and then we can question all of that.

**Mr. Hirsch** continued and then all of the site plan criteria will be back in front of you but...I mean there's things here that might affect the use variance even though they're of a site plan nature. Sometimes it's hard to draw that line very clear. They kind of cross over. You know, like there were some revisions I think, as the Planner notes, where the buildings were moved to the rear of the lot a little further creating a larger buffer area. Things like that that smack of site plan but they also affect whether there would be any detrimental impact in granting the use variance. Sometimes they overlap.

**Mr. Lomangino** stated got it. Thank you.

**Mr. Palmieri** said the thing to do would be to just go ahead and ask our professionals is there anything beyond what we're reading in the letter that we should be concerned about, as far as the use end of it goes.

**Mr. Feist** stated I'll go first. Just from an engineering standpoint, the revised plans that were submitted, putting aside the relocation of the building which appears to be as a result of some of the public testimony that was given at the previous hearing, from an engineering standpoint, they've eliminated the request of one waiver. There had been a waiver to go to 17 feet as a minimum setback from parking stall. They are now respecting the ordinance requirement of 25 feet. From an engineering standpoint, although it's not a site plan, they have eliminated the waiver that would have been required if they had submitted the previous set of plans at the time of site plan. That's it from an engineering standpoint.

**Ms. Gruel** said in terms of some of the planning considerations, I think one is that you may want to consider limiting the...if you are consider this use variance favorably...that this is based upon a standard office use, and not a medical use which may create additional parking standards and demands that you may want to consider in light of whatever you would do in action with this. The other is whether, in fact, you consider the relationship of access and what it talks about in terms and what our memorandum has to say regarding site access and potential alternative access points, whether you want to make note of that in any kind of action that you may take, either as a condition or as a

consideration that at least you're acknowledging that with respect to your review on the site plan application.

**Mr. Hirsch** stated I'm sorry. The access points, Susan, you're talking about.

**Ms. Gruel** said the site access...there was quite a bit of discussion in several of our memos, particularly the most recent one...and I'll talk about Page 6, Controlled access to development within the SI District...no driveways to individual lots are intended onto either Green Grove Road or Asbury Avenue.

**Mr. Hirsch** stated you're talking about the condition that they don't meet for the office use, one of the conditions, that creates the use variance.

**Mr. Gruel** said well, and that there may be some consideration with respect to that under whatever action this Board takes. So those are the two areas, both the parking and the medical use, as well as potential site access and how that's handled in the future, possibly.

**Mr. Hirsch** stated now on Page 6, you mentioned the buffers and the change of the building and you indicate you have fewer concerns regarding the proximity of the office building to the adjacent residential property. Maybe you want to just comment to the Board about that.

**Ms. Gruel** said well, I think that as we've noted there have been a number of changes where that has been addressed by the applicant and there now is a relatively substantial buffer...the extent of the landscaping and the type of buffering is a site plan issue and can be addressed.

**Mr. Hirsch** answered okay. Is there anything else you think you want to point out to the Board.

**Ms. Gruel** said nothing to point out.

**Mr. Hirsch** stated obviously we've been through this. We've had two or three hearings on this. It's not like...

**Ms. Gruel** said I know and I believe that our latest memo really points out some of our comments. I just wanted to note those two in particular.

**Mr. Aikins** stated I would just want to add for the Board's consideration that the comments that were just referred to are listed under the Site Plan section of the Planner's report and I think that the Board's consideration of any condition relating to site access or what have you...while it ultimately might be quite appropriate for the Board's consideration...should not be part of the use aspect of things. It's really a site...from my perspective respectfully...it's a site detail. It's a site plan detail that awaits your consideration if we're fortunate to get to that point.

**Mr. Hirsch** responded well except some of those access points are the requirements of the conditional use requirements that are creating the use variance.

**Mr. Aikins** said we need relief from that today...in order to...correct...but in fairness to the applicant, that would have to be addressed, engineering-wise, at the site plan. For example, if you provide for the alternative access, the closure of what's being proposed, you lose a couple of parking spaces. Well, obviously, parking and access...we're talking site issues. We're not talking use issues. We're talking site issues...so at that time when we get to site plan...again, if we're fortunate to get to site plan, I think we'd have to hash through all those details.

**Ms. Gruel** stated I would note that I agree with your Board Attorney that it is related to the use aspect of this and should be taken into account. It's obviously the Board's consideration as to the extent of how you factor that in, but in terms of your positive and negative considerations, that that's certainly, in my opinion, is a planning consideration for a use variance and details possibly are worked out under the site plan considerations.

**Mr. Hirsch** said right. It's not that we might not also address it as site plan but I just wanted the Board to be clear that it's not something that they don't have to look at, to understand, if they grant the use variance, that's one of the conditions or requirements that they would be granting relief from...and how we ultimately resolve it, if they grant the relief, might not be completed tonight but that could be addressed at site plan...but they still have to consider that that's one of the things they have to waive.

**Mr. Aikins** stated the consideration is appropriate. I agree with you, as well, the ultimate relief is for another day. The ultimate resolution is for another day.

**Mr. Hirsch** said I mean if they really felt that they wanted to place a condition on that in conjunction with the use variance, they could...but I also agree that it could be addressed at site plan as well.

**Mr. Palmieri** stated I mean that's the idea when you bifurcate these things and you're trying to look at one thing at a time...and you're trying to get a concept of just one site plan and one sheet, to see what the whole plan is going to look like...and you sit back and we talk about accesses and all that other stuff...and you know, does the use fit the property. The simpler terms for us...I know there's a lot of technical that goes on with it...but even though we're not seeing the final product, we still have to look at it as a whole...but they bleed into each other. There's no doubts about that.

**Mr. Hirsch** said I mean one of the conditions, by example, and the Planner suggests, is the Board to consider would be the closure of Jumping Brook Road entrance and providing an access to the site from a future access road, in the event that the future development occurs, that would permit that access...which may never happen. Or you could defer that to site plan...that kind of condition...but that is some of the relief. Alright, so you do have a lot of flexibility in that regard.

**Mr. Lomangino** stated got it.

**Mr. Palmieri** said I guess at this point...and I was mistaken thinking that we had closed the public portion...

**Mr. Hirsch** stated I don't think we had.

**Mr. Palmieri** said I don't think we had...at this point, they have rested their case. We've gone through our professionals. At this point I don't think our Board members have any more questions for the professionals. At this point, I'm going to open it up to the public and the public...this is a time when you would...unless there's any questions of the testimony...if there's a statement that you would like to make about this application...

**Mr. Hirsch** stated the public was given that opportunity at the last hearing but we have had some additional discussions, so if there's any comments about the additional discussion, I think that would be appropriate.

**Mr. Palmieri** said it would be limited to the comments that were made tonight.

**Karen Wood**, 2000 Jumping Brook Road, Neptune, was sworn in by Mr. Hirsch.

**Ms. Wood** stated I have the old plans. I didn't get a chance to see the new plans. Our main complaint was the location of the building and now it looks like it's good. We like that...this is exactly what Nancy and I like. This fits everything.

**Mr. Palmieri** said at this point, we're just figuring whether this is a good use for the property...and then there will an additional hearing when they make application for the site plan and then they'll go into more detail about exactly the building with the location and driveways...

**Ms Wood** stated this is away from the side, away from the fence, the trees and away from the building...this is exactly what the four...six of us were talking about.

**Mr. Hirsch** said and this is what I'm sure the applicant will be coming with...a site plan with some other more complicated details.

**Ms. Wood** again stated this is what we wanted.

**Mr. Hirsch** said okay. Thank you. So, anyone else. If not, we will close the public portion and get to a vote. You don't have anything else as a result of that.

**Mr. Aikins** stated no, that's what we wanted too.

A motion to close the public portion of the Kay Realty hearing was offered by Mr. Battista and seconded by Mr. Slazyk. A voice vote in favor was unanimous. Mr. Roche was ineligible to vote as he had missed both prior hearings.

A motion to approve the use variance in the Kay Realty matter was offered by Mr. Battista and seconded by Mr. Moafi.

**ROLL CALL**

Yes: Messrs. Battista, Moafi, Palmieri, Slazyk, Lomangino, Rickert & Porzio

No: None

Abstain: None

DBD, LLC (CLAYTON CONCRETE) BA 2006 – 36  
COMMERCE DRIVE BLOCK 144 LOTS 5.02, 5.04 & 5.05  
AMENDED SITE PLAN

**Peter S. Falvo, Jr., Esq.**, came forward on behalf of his client.

A motion to accept service in the DBD, LLC matter was offered by Mr. Lomangino and seconded by Mr. Moafi. A voice vote in favor was unanimous.

**Mr. Falvo** stated this case involves an amendment to a previously approved site plan which also had all the necessary variances, etc., granted. We went through resolution compliance. We're under construction and due to conditions found in the field, certain changes were brought to the attention of the Engineer who felt we should just come back to the Board to relate what we have to do. I'd like to call as my first witness, Mr. Gordon Milnes from Clayton Concrete.

**Mr. Hirsch** sworn in Mr. Milnes, Director of Engineering for Clayton Companies located at 1355 Campus Parkway, Wall, NJ.

**Mr. Falvo** asked Mr. Milnes to give his educational and professional background to the Board.

**Mr. Milnes** replied I am a licensed professional engineer and planner with the State of New Jersey. Before I began work with Clayton, I was a municipal engineer with Manchester Township for 16 years and then for Millstone Township for six years. For the last four years I've been working in the role of engineer for the Claytons in projects like this one and most recently I testified before this Board in the original approval of this application.

**Mr. Falvo** said thank you, Mr. Milnes. In regard to the amendment to the proposed site plan, we're going to be relying upon plans prepared by French & Parello entitled Amended Site Plan for Preliminary & Final Site Plan dated December 11, 2007, and revised January 11, 2008. Is that correct.

**Mr. Milnes** answered that's correct.

**Mr. Falvo** asked can we mark this as A-1.

**Mr. Milnes** said Peter, we're also joined by Drew French, from French & Parrello and he indicates that the revision date is somewhat more recent than that. The revision date, it's Revision #2 dated 1/25/2008.

**Mr. Hirsch** stated the one you're referring to, which we'll mark separately, is a rendered exhibit on a board...that plan was submitted to the Board though.

**Mr. Milnes** answered yes, it was.

A-1 Site plan dated 12/11/07 revised 1/25/08
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A-2 Rendered site plan on posterboard
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**Mr. Falvo** said alright, Mr. Milnes, you are working with Clayton as construction is proceeding on this development. Is that correct.

**Mr. Milnes** answered that's correct.

**Mr. Falvo** stated and with regard to the changes in the plan, could you just itemize for the Board what changes are being contemplated by this amendment.

**Mr. Milnes** replied I certainly can. The primary change that we are seeking approval for this evening is the relocation of a secondary structure which we had gotten approval for on the site. It's located in the upper righthand side of the drawing as a square. It's roughly a 30 X 40 building. We refer to it as the reclamation building. This is where certain recycling within the concrete process gets performed. We had originally shown the site plan with that equipment as a secondary building but as we got into the detailed design of the building and the structure, we realized that by just moving it and attaching it to the principal building, we could simplify the site in a number of ways. Most notably, we save on some mechanical equipment which now is shared between the two uses because actually it's one building, rather than two...and we can eliminate which was to be an overhead pipe between the two structures. This smaller building...it's function is to pump water back into the concrete plant and to do that it does it overhead and it would be a visible pipe which now can be run inside the building, eliminating both the visible aspect of that pipe and facilitating some better plumbing. It's a sensible change to the plan and it's consistent with the sister plant we have in Lakewood which also has this feature attached to it. One of the benefits of doing this is that we actually eliminate a number of setback variances that we had been given with the original application because this building was to be located within 12 feet of the proposed limit of disturbance. The distance of 12 feet...now that the building is attached to the principal building, it has increased to 114 feet. Again, that's as measured from the limit of disturbance. If one were to measure that same distance to the property line, we're over 320 feet. It's just that this site has a lot of constraints associated with it.

So that's the principal purpose of the application this evening and as we got into the detail design of...you know, reviewing the manufacturer's details for the conveyors and the equipment that goes within the building, we made an adjustment to the length of the conveyor. The conveyor was to come out of the building and exit, or come down to ground level, at this location here on the plan. We moved it what represents about 28 feet into the paved area...and again that's to accommodate the geometry of the equipment that's actually going into the building. There is no change....Yes, sir.

**Mr. Palmieri** said just to slow you down...real quick...just with the conveyor belt because I was trying to look at the measurements that are on the first exhibit here. Is the distance that it would save from going from one of the gravel locations to the conveyors...unless I'm not reading this right...it says 66 feet or is that just a loading area. Is that correct.

**Mr. Milnes** stated that distance of 66 feet is just an open area on the pavement. So, we'll have a front end loader in that area and we'll have 66 feet or more because behind that 66 feet is another 40 feet of area which we would just use for stone storage.

**Mr. Palmieri** said the only reason I bring that up because you're saying you're moving it...I'm looking for number changes on some of the distances on what you've got here and the one that crosses through the conveyor still says 113 on both sides unless that's the elevation...

**Mr. Milnes** stated well, that's a good point. The plans to the right are intended to show the original approval and it's in a hatched pattern. The distance that we're showing now at 66 feet was never dimensioned on the original plan because it's really not a setback distance or anything. It's more, honestly, that number's more for us internally for traffic movements...but the distance...

**Mr. Palmieri** interrupted saying you know what I'm trying to figure out is I'm looking at the two drawings next to each other and say "okay, you want a little bit of a change here." I'm looking for numbers on the drawing so I see how the original building has gone on the amended site plan and I'm just saying with the conveyor belt, it kind of looks the same. I don't see...unless I'm missing...like you're saying it's an overlay.

**Mr. Milnes** stated if I can just point to your plan, I'll just show where the hoppers were. Right at this location, right here. There are one, two, three, four hoppers right here separated by these walls which is the same structure that's here and the distance between them...the distance that they've been moved towards the south is 28 feet.

**Mr. Palmieri** said so the darker is the new location and the light gray is the old location.

**Mr. Milnes** replied that's correct.

**Mr. Palmieri** stated so this additional footage that you're moving the conveyor system from the original plan is 28 feet.

**Mr. Palmieri** replied okay.

**Mr. Milnes** stated I hope that clarifies it. All of that occurs within a paved area. Nothing that we're proposing as an amendment here changes any of the impervious coverages for the property or the drainage characteristics. So, in addition to that, when we got out in the field and we were building our perimeter walls at this time, the actual area topo that we had with the original subdivision...there was an error in it along...if you will...the outside of the wall by the conveyor area...the actual ground level was higher by about 4 feet than the aerial indicated...so we have adjusted some grades along the wall to accommodate for that. Certainly that doesn't change anything on the footprint of the plan but it's just a correction to the plan for conditions that have been represented in the field.

As your planner and engineer note, going back to the reclaimer, the recycle building, there's a stormwater pit that's associated with it and some drainage features, basically some drainage inlets. There's a storm filter device. All those elements in the original plan are in the amended plan. It's just that we had to move them slightly and actually change the discharge point for the stormwater because of that elevation change in the existing grades that I just mentioned. It's the exact same design. Exact same discharge. It's just that the discharge point has moved from out by the conveyors to near the stormwater detention basin.

**Mr. Falvo** asked and that also caused the wall to move a little closer.

**Mr. Milnes** answered very slightly. There's a slight angle to the wall. We've actually moved the wall in towards the site, as Mr. Falvo indicates, at the location of the storm filter. That was done to accommodate the scour hole outside the wall and we made a slight wall adjustment, as also noted in one of your professionals' reports, along the north side, just to simplify construction of the wall and provide us just a little more pavement area in the north end of the site. Again, it really maintains a balance to what was approved. In no case are we infringing on the limit of disturbance.

**Mr. Slazyk** asked have you started any of the site work.

**Mr. Milnes** replied yes. We're quite a ways along with that. We do have all our site permits. The site's been cleared. There's been some rough grading. The perimeter walls are under construction and we're under construction right now with one of the big equipment foundations that is interior to the building.

Our amendment only applies to the concrete plant. We also got approval for a garage. No changes for the garage site and we're also cleared and under construction over there as well.

**Mr. Falvo** said with regard to the amendments, the comment in the Planner's report of January 31<sup>st</sup> refers to landscaping. The approved landscaping on the perimeter of the site is not being altered.

**Mr. Milnes** replied that's correct. There's no change.

**Mr. Falvo** stated and with regard to the proposed driveway access, that's the same as the original plan. Is that correct.

**Mr. Milnes** answered that's correct. There's no change to driveway access or circulation.

**Mr. Falvo** said you also moved two of the cement loader trailers. Instead of being parallel to the concrete plant, they're a little bit askewed. Is that correct.

**Mr. Milnes** replied well, that's true...but they're really just representations of where those vehicles would park. It's just a guess.

**Mr. Palmieri** asked that's not like a striped area.

**Mr. Milnes** replied it's not.

**Mr. Palmieri** said it's just an area where they would normally park to unload.

**Mr. Milnes** stated it's to assure that there's sufficient area for them to pull in.

**Mr. Falvo** said there were 8 parking spaces across the east side of the building between the original recycling plant and the cement manufacturing plant. They've been relocated. Is that correct.

**Mr. Milnes** answered they have. We've maintained the same number of parking places on site. No change to the 5 places that were shown on the southerly portion. We have shown 4 parking places on the north and 4 parking places on the east and I can indicate to the Board that these parking places are provided more for Ordinance requirements. We're way over-parked on this site for the actual number of parking that we need. At any time, there's really only two or three people that are actually working at this facility.

**Mr. Falvo** said and with regard to the other four locations of the truck queuing area, those are substantially the same location that they were before. Is that correct.

**Mr. Milnes** replied yes, they are.

**Mr. Falvo** asked with regard to the location of the parking spaces and the driveways, do you envision any problem with the trucks functioning through this site as they come, queue, pick up their load and leave.

**Mr. Milnes** answered no, I do not. The circulation is the same.

**Mr. Falvo** asked and the circulation is set up for in and out on either driveway.

**Mr. Milnes** replied it is. We intended to have the flexibility to have two-way access at each driveway and that services the site well. We would continue to do that.

**Mr. Falvo** said with regard to Item #7 in the Planner's report – the applicant should indicate the provision of sight triangles. The sight triangles have not been modified. The sight triangle easements have been recorded and they were approved by the Engineer and Mr. Hirsch and the municipal attorney. As a result of these changes, with regard to the setback of the reclamation building, you're actually increasing that. Is that correct.

**Mr. Milnes** answered yes, we are.

**Mr. Falvo** continued by saying and that setback is measured to the area of the wetlands and not to the property line.

**Mr. Milnes** stated yes, it's actually measured to the wetlands buffer and as I indicated the distance to the property line is 323 feet.

**Mr. Falvo** said with regards to the Engineer's report, if we could just for a moment, I believe most of the comments were similar...you had indicated why we need the variance for the setback and the relocation of the conveyor belts...vehicle circulation, you indicate will not change as a result of this.

**Mr. Milnes** replied that's correct.

**Mr. Falvo** said the basin outfall and storm filter structures...these are all in conformance with stormwater management plan that was originally introduced so nothing has changed in that regard.

**Mr. Milnes** stated nothing's changed and your Engineer has indicated that as well.

**Mr. Falvo** said as to Item #5 – the amended application does not have any effect on the NJDEP approval because we are still staying outside the deeded area of restriction. With regard to the revised basin access for maintenance, could you please explain to the Board what differences occur there and if, as a result of those differences, there's now an impediment to having access to the basin.

**Mr. Milnes** replied the access is moved slightly but it's the same width gate that provides access to the basin. It's just in a more northerly location, the location of the basin, as compared to the original plan.

**Mr. Falvo** said alright and if you look at the left side of A-1 in evidence where it says amended site plan, there's a clear path to that gate so that whoever or whatever has to get into the basin can do so.

**Mr. Milnes** answered yes.

**Mr. Falvo** stated okay and as far as the (inaudible) planned for that basin, it's the same as was submitted as part of the original application.

**Mr. Milnes** replied it is the same.

**Mr. Falvo** said he's requesting you resubmit for an amended soil erosion and sediment control plan.

**Mr. Milnes** replied we agree with that comment. We have already prepared that application.

**Mr. Falvo** responded okay. I have no further questions of this witness unless members of the Board or the professionals do.

**Mr. Hirsch** said I just wanted to clarify one thing. You said the sideyard setback that was approved was 12 feet and now it's going to be 114.

**Mr. Milnes** replied yes, sir.

**Mr. Hirsch** said okay and I understand that's measured to the wetlands, not your property line.

**Mr. Milnes** answered that's correct.

**Mr. Rickert** asked I had one question with regard to the parking. How many spaces are you providing.

**Mr. Milnes** replied we're providing, I think, 8 in the northerly location, 5 along the southerly property line, for a total of 13. We also have, as part of the original approval with our garage, which really is not being discussed this evening, many more parking places...parking places for all the truck drivers...

**Mr. Rickert** said that's why I was asking...

**Mr. Milnes** continued by saying we don't actually park the cement mixers here at night. They're going to be parked at the other site.

**Mr. Rickert** answered okay.

**Mr. Falvo** said these spaces are just so the trucks can queue while they get their load.

**Mr. Rickert** stated oh, I thought they were being stored onsite.

**Mr. Falvo** said no, no.

**Mr. Rickert** stated okay, thanks.

**Mr. Palmieri** asked is there anything from the professionals.

**Mr. Feist** replied nothing really to add, Mr. Chairman. The applicant's engineer has addressed Items #1 – 7 in our engineering review to my satisfaction. I would certainly recommend the amendments to the site plan that are proposed this evening.

**Ms. Gruel** stated we have no comments.

**Mr. Palmieri** opened the floor to the public for questions or comments about the application. There were none.

A motion to close the public portion of the DBD, LLC hearing was offered by Mr. Slazyk and seconded by Mr. Lomangino. A vote in favor was unanimous.

A motion to approve the amended site plan for DBD, LLC was offered by Mr. Slazyk and seconded by Mr. Battista.

**ROLL CALL**

Yes: Messrs. Slazyk, Battista, Palmieri, Lomangino, Moafi, Rickert & Porzio

No: None

Abstain: None

OTHELLO HATCHER  
38 TERRY LANE

BA 2007 – 21  
BLOCK 4.01 LOT 10

FRONTYARD VARIANCE  
**RE-SCHEDULED FROM DECEMBER 20, 2007**

**Mr. Hirsch** advised he had reviewed the application and found the affidavit of publication and proof of service in order as to form.

A motion to accept service in the Hatcher matter was offered by Mr. Moafi and seconded by Mr. Slazyk. A voice vote in favor was unanimous

**Gwen Rogers**, daughter of the applicant, and **Dennis Hala**, Bricktown, the contractor for the porch, were both sworn in by Mr. Hirsch.

**Mr. Palmieri** asked who wants to tell the Board what brings you here this evening and what would you like to do to the property.

**Ms. Rogers** advised I moved in with my parents who are both disabled to take care of them. We increased the square footage of our home to accommodate their disabilities and we're asking to put a front porch on the home.

**Mr. Hirsch** said with the porch, you're proposing to have a frontyard setback of 31.3 feet. Correct.

**Mr. Hala** replied yes.

**Mr. Palmieri** asked you mentioned disabled, does the porch have anything to do with a wheelchair or anything like that or is it A.D.A. accessible.

**Mr. Hala** and Ms. Rogers both answered no.

**Mr. Palmieri** said okay so it's just a normal porch because you want to have a porch.

**Mr. Hala** replied right.

**Mr. Hirsch** said the application states you've taken the average of the frontyard setbacks of the buildings on the next five lots on each side which average 34.91 feet.

**Mr. Hala** answered right.

**Mr. Hirsch** asked who did that.

**Mr. Hala** replied Ron Post Surveying.

**Mr. Hirsch** asked and was that information laid out on the survey you submitted to the Board.

**Mr. Hala** answered yes.

**Mr. Palmieri** said looking at the application, we have a site plan that's marked A-1 for 38 Terry Lane. Just so we get some idea of the surrounding area and what's going on with the houses next to you...it's not marked on your site plan. Assuming that Terry Lane is in the front of the house and if I'm standing on Terry Lane looking at your house, the property to the right which is not indicated by a lot or block...I don't know if you know what that property is but...how far would that house be from your common property line. Do you have any idea. I mean, do you understand where I'm going...you know most of the site plans, when we get them, they usually have the lot and blocks of the properties that surround the subject property. You know, looking at this, we don't see any indications of what is on either side of the property or to the rear.

**Mr. Hala** stated whatever it says here, the setbacks are about the same for both houses.

**Mr. Palmieri** said so you're indicating that the house is approximately 15 feet from the common property line. And also staying on Terry Lane and looking at your property, looking to the left...that indicates that from the new two-story deck is 27 feet and from the main structure itself it's 37 feet...from your house to the property line. So from that common property line to that next house...how far is that.

**Mr. Hala** advised that's actually a cul-de-sac there so...

**Mr. Palmieri** asked so is there any residence at all to the left.

**Ms. Rogers** replied to the left, yes, but it's on another street. That's their backyard.

**Mr. Palmieri** asked so how far is that backyard to their house.

**Mr. Hirsch** stated to your line.

**Ms. Rogers** said I don't know what the size of their backyard is.

**Mr. Slazyk** stated let me ask the question. How far is the back of your house from the back of their house.

**Mr. Hala** said it would be the side.

**Mr. Slazyk** stated I understand it's the side. I mean I've been there. I've seen it but roughly how far would you approximate...there's a backyard and then the house. How far do you think that house is from the side of your house.

**Mr. Hala** answered I would think between 50 and 60 feet.

**Mr. Palmieri** said that's good. Just, I guess to get it on the record, and I'm assuming the dotted line is indicating that is the perimeter of your property. Is that correct.

**Mr. Hala** replied yes.

**Mr. Slazyk** said and that's the cul-de-sac.

**Mr. Palmieri** said so I don't know if we have to worry about anything to the rear. I guess the question comes also are there two sheds on the property or just one.

**Ms. Rogers** stated there's two sheds.

**Mr. Palmieri** said the Ordinance only allows one shed on a property.

**Ms. Rogers** replied they're all coming down.

**Mr. Palmieri** stated so your testimony is they're going to be removed.

**Ms. Rogers** advised they are going to be removed.

**Mr. Palmieri** said that takes care of that. Is there going to be a shed replacing it.

**Ms. Rogers** replied eventually.

**Mr. Palmieri** stated and obviously you know the town ordinance says one shed no larger than 150 square feet and then you've got setback rules from the rear property line and so on and so forth. Alright, let's get back to the front porch.

**Mr. Hirsch** asked what are the dimensions of the front porch that you're proposing.

**Mr. Hala** replied it's 5 feet by 24 feet 4 inches.

**Mr. Hirsch** asked is this porch covered with a roof.

**Mr. Hala** replied yes.

**Mr. Hirsch** asked is it covered in any other way. The sides are open.

**Mr. Hala** replied just the roof. Everything else is open. There will be rails.

**Mr. Palmieri** said I guess the dimensions are more with what you get with A-2.

**Mr. Hala** stated look at A-3. You can see the dimensions on the floor plan.

**Mr. Palmieri** said I guess this gives the whole internal floor plan of the house too. We're only concerned about...I guess are you redesigning the whole inside of the house along with this.

**Mr. Hala** replied that's already done. That was already approved by the Building Department.

**Mr. Palmieri** said let's the average frontyard setback was 34.9. So you're asking for 31.3. Is that correct.

**Mr. Hala** replied right. The existing porch was actually just a little bit smaller than this. It came out 4 feet and just wasn't as long...so it was already non-conforming.

**Mr. Palmieri** asked so there's an existing porch already there.

**Mr. Hala** replied well, it was falling apart but it was there. We took it down to do the construction.

**Mr. Slazyk** said you ought to leave it done. Not put it back.

**Mr. Hala** stated we would have to put something back there. So this was what we put into the Building Department. It will nice around the house, obviously, but the existing house hasn't moved but there was an existing porch to get into the house that was already non-conforming.

**Mr. Hirsch** asked how big was that porch. Do you know.

**Mr. Hala** replied it came out about 4 feet by 8 feet and that had a little roof over it too.

**Mr. Hirsch** asked was that set back about the same as the proposed porch.

**Mr. Hala** answered it was about one foot shorter.

**Mr. Palmieri** said so instead of being 5 by 24 like you're indicating, it was 4 by 8.

**Mr. Hala** replied right.

**Mr. Palmieri** asked it shows a new concrete walkway. Has that been put in yet or no.

**Mr. Hala** replied no.

**Mr. Palmieri** stated so the proposal is you want to the concrete to go up to the porch. Is it going to be a concrete porch.

**Mr. Hala** replied it's a concrete porch.

**Mr. Palmieri** asked so it's going to be a new concrete porch replacing I guess a wood porch.

**Ms. Rogers** replied no, it was an old concrete porch.

**Mr. Palmieri** asked there's an open area, I guess if you're facing the porch, to the left that goes towards the driveway area. Is that a grass area.

**Mr. Hala** replied yes.

**Mr. Palmieri** said looking at the paper with the average frontyard setbacks, the average comes to 34.9. They're looking for 31.3. So you're talking about 3 feet off the average.

**Mr. Hirsch** asked do any of the neighboring homes, you know the four or five houses, do you have front porches. Not just stoops, you know, steps with a little landing. Do they have front porches.

**Ms. Rogers** replied yes. The neighbor across the street has a half porch like we're trying to do...a covered porch.

**Mr. Hirsch** said so the other homes, with the average, even with those front porches, are approximately 34 feet on their setbacks.

**Mr. Palmieri** asked and you're good with the measurement you've taken, the 31.3.

**Mr. Hala** replied yes.

**Mr. Palmieri** said because obviously, if the Board was to approve it, and it goes to the Building Department, they've got to measure based what was discussed.

**Mr. Hala** answered absolutely.

**Mr. Palmieri** asked if any Board members had any questions. There were none.

**Mr. Palmieri** opened the floor to the public for questions or comments about the application. There were none.

**Ms. Rogers** and Mr. Hala had nothing further to add.

A motion to close the public portion of the Hatcher hearing was offered by Mr. Lomangino and seconded by Mr. Rickert. A voice vote in favor was unanimous.

A motion to approved the variance in the Hatcher matter was offered by Mr. Lomangino and seconded by Mr. Rickert.

**ROLL CALL**

Yes: Messrs. Lomangino, Rickert, Palmieri, Slazyk, Moafi, Battista, and Porzio

No: None

Abstain: None

MOGUET DESTOUCHES BA 2007 – 24  
16 WAYSIDE TERRACE BLOCK 118.02 LOT 16  
TWO SIDEYARD & FRONTYARD VARIANCES AND BUILDING COVERAGE

**Mr. Hirsch** advised he had reviewed the affidavit of publication and proof of service and found them to be in order as to form.

A motion to accept service in the Destouches application was offerd by Mr. Rickert and seconded by Mr. Slazyk. A voice vote in favor was unanimous.

**Moguet Destouches**, the applicant, and a friend to help interpret, Jean Baptiste, 5 White Dr., Neptune, were both sworn in by Mr. Hirsch.

**Mr. Destouches** advised he wanted to do an addition to his house on the second floor.

**Mr. Palmieri** asked looking at your survey, if I'm standing on Wayside Terrance and I'm looking at your property, can you give the Board an idea of the property that would be to the right of your property, how close it is to your common property line. That would be Lot 14.

**Mr. Destouches** replied 10 feet.

**Mr. Palmieri** asked on your survey, it shows a dwelling and it has some measurements on here and it indicates 7 ½ feet and as it goes towards the rear of the property, it gets closer. Is that correct.

**Mr. Destouches** replied yes.

**Mr. Palmieri** said now going to the other side of the property, on Lot 18, it also indicates there's a dwelling there on the survey and at the front it indicates that it's 7.3 feet and to the rear, it gets really close to the property line. Is that correct.

**Mr. Destouches** replied yes.

**Mr. Palmieri** stated also looking at your property, if I was looking to the rear, it doesn't indicate the lot number, how far would that house or dwelling be from your common property line.

**Mr. Destouches** replied about 55 or 60 feet.

**Mr. Battista** asked can I just be clear on something. Is this the existing house footprint and they're going to build up on. This already exists.

**Mr. Destouches** answered yes, I'm building up.

**Mr. Palmieri** asked now the house to the right of you on Lot 14, is that a single story or a two-story.

**Mr. Destouches** replied it's two-story.

**Mr. Palmieri** asked and the property to Lot 18, which would be to your left, one story or two-story.

**Mr. Destouches** replied two story.

**Mr. Palmieri** asked and currently your house is only one story.

**Mr. Destouches** answered one and a half.

**Mr. Palmieri** said it's like a dormer.

**Mr. Destouches** replied yes.

**Mr. Palmieri** said so what's the variance then.

**Mr. Hirsch** stated the house has a lot of existing setbacks so the second floor is going to increase it.

**Mr. Battista** asked is your house the same model, the same type, as the one to the right and to the left.

**Mr. Destouches** replied yes.

**Mr. Battista** asked and what you're proposing to build on top is similar to what they have on either side.

**Mr. Destouches** replied it's different because I go up over my garage.

**Mr. Baptiste** explained he's building a bedroom over top his garage and when it is finished, it will be bigger than his neighbors' houses.

**Mr. Palmieri** asked did you read Lori Paone's letter.

**Mr. Destouches** replied yes.

**Mr. Palmieri** said her Point #5 says "sewer or septic approval is required. Either approval to attached to sewer or approval for enlarging the structure that septic can handle the improvement." So, if you're building a bigger house, finding out whether you can handle the larger, can you attach it to the sewer system or...

A gentleman in the rear of the meeting room stood up and wished to talk to help translate for the applicant.

**Linus Nicholas**, 225 Poplar Place, Neptune, was sworn in by Mr. Hirsch.

**Mr. Nicholas**, after speaking to Mr. Destouches, advised he said he was hooked up to the sewer.

**Mr. Hirsch** stated just so we're clear, if the Board approves this, they will make it a condition that either you are or will hook up to the sewer or you'll get approval from the Board of Health, if you did have a permit to expand it. So, if you got the sewer, you'll be okay. So, if there's any confusion on it, it will be a condition in the resolution.

**Mr. Palmieri** said I think based on the survey we got, it does pose a little bit of a hardship even with the properties surrounding him...I mean the structures are already so close to begin with. You have no way to go to the rear of the property or to the sides to expand. The only availability he has is to go up. Do any of the Board members have any additional questions.

**Mr. Palmieri** opened up the floor to the public for questions or comments. There were none.

**Mr. Palmieri** said at this point, I'm going to ask the applicant is there any other information you want to give or reasoning why the Board should approve the addition of the second floor.

**Mr. Slazyk** asked the exterior facade, is it going to be identical to what you already have out there. Is the second floor going to look like the first floor.

**Mr. Destouches** replied yes.

**Mr. Battista** asked same color, same siding.

**Mr. Slazyk** asked in other words, it's going to look presentable. You're going to have same look to the second floor that you have on the first floor.

**Mr. Destouches** replied exactly.

**Mr. Battista** pointed out that typically the Board is the architectural plans of what the house is going to look like and if we approve the building of the second floor...that's one thing. The second thing is there going to be any review or whatever of what that structure will look like.

**Mr. Palmieri** indicated no.

**Mr. Battista** said no so he could turn it into a...

**Mr. Lomangino** stated that's why John said "it's got to match."

**Mr. Palmieri** said the Building Department will review what's going there.

**Mr. Hirsch** stated the Building Department will approve building plans under the construction code. That's what the Building Department does.

**Mr. Battista** asked nobody approves the design or look of it.

**Mr. Hirsch** replied no. You know, as they say, beauty is in the eye of the beholder. I mean we don't usually get into aesthetic architectural things but occasionally, in zoning, when variances are granted, aesthetics, the look of something, can be taken into account.

**Mr. Lomangino** asked can we put in there that the second floor has to match.

**Mr. Hirsch** said he indicated that there was...and feel free to ask for any clarifications...but, as I understood the testimony that there was siding and the siding on the existing house will match the siding on the second story. That's what I understand the testimony to be but if anybody wants to follow up on that.

**Mr. Nicholas** stated he said he will keep everything the same after the addition.

**Mr. Battista** asked and do you have plans already drawn up for that addition.

**Mr. Nicholas** replied he said yes he does.

**Mr. Battista** asked if he had copies at the meeting that the Board could look at.

**Mr. Destouches** indicated no.

**Mr. Palmieri** said just so you...it's not contingent on the approval or disapproval. It's just a helpful tool when you're trying to visualize something that you're going to build so we see that it conforms with the rest of the neighborhood. We're just dealing with the variance of being allowed to put a second floor...and the setbacks that are involved and lot coverage and all those fun things. But, it's a very good point. It's always helpful to see more than less. But, be that as it may, we here tonight and what we have is what we're dealing with in front of us and we're relying on the testimony of the applicant *and his friends* to make sure we get the right information.

**Mr. Slazyk** stated we just want to make sure you understand that it's got to be pretty much in conformity and it needs almost identical that whatever you have on the first floor, you're putting up on the second.

**Mr. Palmieri** said the original question was the reasoning behind putting on a second floor. The reason for putting on a second floor is...

**Mr. Destouches** said I got three kids.

**Mr. Nicholas** stated I guess the family got a little bit better.

**Mr. Palmieri** said hey, it's easier than buying a new house. Alright, that sounds good.

A motion to close the public portion of the Destouches hearing was offered by Mr. Slazyk and seconded by Mr. Battista. A voice vote in favor was unanimous.

A motion to approve the Destouches application providing that the first and second floor have a similar appearance and characteristics was offered by Mr. Slazyk and seconded by Mr. Lomangino.

**ROLL CALL**

Yes: Messrs. Slazyk, Lomangino, Palmieri, Moafi, Battista, Rickert & Porzio

No: None

Abstain: None

**Mr. Palmieri** said I spoke to Mr. Hirsch a while ago about giving some instruction and picking a night that we're going to have...if we don't have a heavy night...but going through his little one hour seminar so the Board understands exactly what the Zoning Board even though I know we've got some seasoned professionals up here already. March 6<sup>th</sup> we have Winding Brook so I just want to make sure if we put this together that the Board members will all be here for this so Mr. Hirsch won't have to waste his valuable breath explaining this to us.

**Mr. Battista** asked that portion of the meeting taking place at the Grist Mill.

**Mr. Palmieri** replied that isn't a bad idea. All right so let's put it on for Mr. Hirsch giving us his little seminar on March 6<sup>th</sup> and I'll have Mr. Gotfredsen contact...

**Mr. Hirsch** interrupted asking how much time do you want for this because we can do the short version or the long version.

**Mr. Palmieri** said I'm assuming the short version is one hour.

**Mr. Hirsch** stated sure, everything you needed to know about land use in an hour.

**Mr. Battista** said but we're all going to the training on April 5<sup>th</sup>.

**Mr. Palmieri** replied you guys are. I'm exempt.

**Mr. Battista** asked but what I'm saying is between...

**Mr. Palmieri** replied what I'm saying is that's a different type of insight. That's a required thing where you go through the classes. It also helps when you have Mr. Hirsch go through it because I went through it many years ago where it's more of an interactive thing and he goes into more detail of what happens in Tinton Falls.

**Mr. Hirsch** said if you say so, Mr. Chairman. I mean I don't know if you want the Planner and Engineer to give their viewpoints. It's up to how much time you want to put aside. They each have their own perspective.

**Mr. Lomangino** asked March 6<sup>th</sup> is a regular Thursday night meeting, right.

**Mr. Palmieri** replied March 6<sup>th</sup> is a regular Thursday meeting. You got Winding Brook School. They were in front of us a few years ago.

**Mr. Lomangino** said I would put as much time as we can because that's where we're going to learn the most.

**Mr. Palmieri** stated so we would start with Winding Brook and let them know that we're going to save the last hour of the meeting for us. Give them an hour and then we'll get the second hour.

**Mr. Hirsch** asked are all the members lining up to take that course that they're statutorily required to take.

**Mr. Gotfredsen** advised the four new people are signed up to take it.

**Mr. Palmieri** said there you go. Wait, Mr. Hirsch, a member has a question.

**Mr. Moafi** stated I have a question about the application that we approved last week...about approving a subdivision on a private road. Is that allowed...to approve a subdivision on a private road.

**Mr. Hirsch** replied that was one of the variances that you had to grant. There were variances related to that.

**Mr. Moafi** said I'm not comfortable about approving something...how do these subdivision lots have the right to use the driveway.

**Mr. Lomangino** asked does that become a public road or does it stay a private road.

**Mr. Hirsch** replied no, no. My understanding of this was it was going to be maintained as a private road servicing subdivisions. That will all be part of the approval in the conditions that that road will dedicated and maintained for that purpose. The question that came up which the applicant was supposed to come back with some information eventually...if you recall the traffic engineer indicated that a light...eventually when it was built out...would be needed and they agreed to bond for the light but no one was sure whether the County would allow a light from a private road to a County road.

**Mr. Moafi** said that's right.

**Mr. Hirsch** continued by saying the point was if they...and we never got that answer...whether the County will or will not allow a light there at some point unless that becomes a public road. So, we never got that answer, at least to my knowledge. On the auction, if you recall the condition about the police officer so on and so forth directing traffic...and John Rea, the traffic engineer, did indicate that eventually he thought a light would be appropriate there...not necessarily now with the auction but when the whole thing was built out, it would be.

**Mr. Moafi** asked but how can we force the light...I'm pretty sure the County would never allow a light on a private road.

**Mr. Slazyk** said it's a public road as well.

**Mr. Hirsch** stated no, no, I mean the light will be on Shafto leading from a private road. And that's the issue and I didn't know the answer.

**Mr. Feist** asked if I could just jump in on that because it's not unusual...I can't speak specifically for every county...but another example to look at and you see this all over the place...you'll see adult communities and those are typically private roads, gated communities and it's not uncommon to see a traffic signal at those communities.

**Mr. Moafi** said but that's not a subdivision.

**Mr. Feist** replied but in some cases they are. Whether it's a condominium ownership or fee simple wouldn't make a difference. The issue comes down to whether or not the County would allow a traffic signal at a private drive and the simple answer is, in my experience, is yes. Again, I can't speak for every county. Certainly in Middlesex and Monmouth, I've seen that done on a regular basis.

**Mr. Moafi** said I think you're wrong. I work for Monmouth and I don't think we do it. I don't think we approve a private drive.

**Mr. Lomangino** asked what are the pros and cons to a person wanting to keep it private, just for a future thing. If we say you have to deed that road over to the town after...what are the pros and cons...you can never sell it, right, because you can't block off the subdivision behind him.

**Mr. Feist** replied the pros to the town are that you don't have to maintain that road...no snow plowing...

**Mr. Moafi** interrupted saying but you still have to maintain when it comes to safety and all of that.

**Mr. Feist** answered the town does not have that obligation.

**Mr. Moafi** said if somebody, for some reason, doesn't meet standards and somebody gets hurt there...

**Mr. Feist** replied it is the property owner.

**Mr. Lomangino** said so the town has no liability there.

**Mr. Feist** stated I don't want to speak for Mr. Hirsch but I believe the town...

**Mr. Hirsch** said that's the idea. It's a private road. It's not the municipality's obligation.

**Mr. Feist** stated so that's the pros to the town. The cons, and I don't really think they apply to the application that you're referring to, are if you've got a 3 lot subdivision and you've got an easement across the lots and you've got 3 homeowners utilizing this easement or this driveway, you have homeowner disputes. I've seen that happen all the time. Someone decides they're not going to take care of the road. Someone's parking their cars improperly. Now the town has no ability to go in there and enforce the State

traffic regulations. So that's the only negative that I really see and it really relates to the individual homeowners.

**Mr. Moafi** asked would that apply to this condition we have here.

**Mr. Feist** replied I don't think it would apply in this one because it would appear that there would be some sort of association maintaining that road. Those lot owners are going to be part of a group, an entity, maintaining the common area, just as it would in a condominium association or a townhome development where you have common elements.

**Mr. Hirsch** stated well, this wouldn't be a condominium or townhouse ownership but they can have, just like a homeowners association, they can have an association of the owners of the lots. But there's also a discussion about granting Title 39 authority, which is typical on private land or a subdivision or a shopping center. That way, once they grant that authority, police can go down that road. If somebody's racing up and down 90 miles an hour, they can give them a ticket. Do you follow me. Yes, that's usually a condition that they grant Title 39 power to the municipality, even though it's private, they grant that power...because without granting it, the police wouldn't have jurisdiction.

**Mr. Feist** said just another thought, not to disagree with what Monmouth County does, this would be no different than a traffic signal on a County road where you have an entrance to a shopping center. It's a private driveway, whether they call it a driveway or a road, it's a private access. So, again, I really do believe that it's not unusual for counties or local governments to construct traffic signals that may involve one of the legs of the signal being a driveway or private access.

**Mr. Hirsch** added this is a commercial subdivision, not a residential. I mean these are commercial lots. There's no residential.

**Mr. Moafi** said if it's a commercial lot then you have a lot that doesn't have any rights to use it. How would you have the right to use a driveway if they don't own it or own an easement on it.

**Mr. Hirsch** replied there will be. There will be rights for those...because that's part of the approval, part of the subdivision map that's being approved, that that road is the access point for those. That's going to be all recorded so there will definitely be legal rights for them to use that road. They will have rights...not yet...but they will. That's part of a filed subdivision. It will be part of the resolution. It will be part of the deeds that that road is their access and must be their access...so they will have legal rights to utilize that and we will get the appropriate easement rights filed with the Board granting those legal rights as part of the approval. And then when the subdivision map is filed, it will memorialize that road.

**Mr. Lomangino** said I have a question for the planner. In the future when we have situations like this come up, do you suggest that somebody here ask if they would mind donating that road over to the town after it's completed. Should we be looking for that.

**Mr. Slazyk** said you don't want that road.

**Mr. Lomangino** stated that's what I'm asking...you don't want that road. Are we better off not having that road.

**Ms. Gruel** answered it depends. One of the things you'd have to look at is your Master Plan and see whether there's any proposed roads that are identified in the Master Plan.

**Mr. Lomangino** stated that's what I'm saying. Is that something that we Board members should be looking at or that the engineers and the planner be looking at when they come up.

**Ms. Gruel** said we would look at it in the review. However, generally speaking, it probably won't be, generally speaking, it probably wouldn't be there but it's so fact sensitive...

**Mr. Lomangino** stated that's what I mean, you guys are watching that no us up here. If you would recommend it as a planner or an engineer, when you see it specifically...

**Mr. Feist** replied if it appears that there was property to, in this particular case, to the rear, which we know there wouldn't be because you've got a brook that runs through there...we would be sensitive to the fact that you may want to provide an access to that property. In that case, we would have said "let's make this a township road so that future development to the rear can be accessed from that point. Susan's quite correct in that it's case by case. You can't make a general statement about it. You really need to look at the circumstances.

**Mr. Battista** said right and in terms of this one being commercial and having all of that farm equipment and whatever going in and out that road, that road is probably going to be all torn up in 3 years and we probably don't want to be having to re-lay it every 3 years because it probably has such a heavy use. That would put the burden on them and not us to fix it.

**Mr. Feist** stated I would agree with you. It's not unusual in many, many towns when you've got an application for an industrial park...that's a good example...you wouldn't want to have to take over the maintenance of the roads in an industrial park because they do get beat up.

**Mr. Lomangino** said i.e., Commerce Drive.

**Mr. Slazyk** stated that is an industrial park. That's what it's going to be.

**Mr. Rauch** said Mr. Chairman, when we approved Borough Properties, there were several recommendations mentioned in the letter that they agreed to. They did agree to Title 39 because we had restrictions that they agreed to with parking on the cul-de-sac there...that there may be issues. We had no parking signs and they agreed to Title 39 so that the police can go and enforce traffic violations on that site. Plus they did agree to the driveway through the main Mazza property...they did agree to an access easement...creating an access easement...and as part of resolution compliance, they have to provide us with the legal descriptions for our review and approval for the access easement of that driveway into a subdivision. Now, we're going to be hearing, coming up, the SIMS application which is right at the beginning of that subdivision there where the same thing...you'll have the access easement that they're going to have to include the SIMS property in.

**Mr. Palmieri** said well, I almost had us done by 9 o'clock.

**A motion to adjourn the meeting was offered by Mr. Battista and seconded unanimously.**

Respectfully submitted,

Doug Gotfredsen  
Board Secretary