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Florence, New Jersey 08518-2323
June 19, 2006

The regular meeting of the Florence Township Planning Board was held on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairperson Hamilton-Wood called the meeting to order at 7:35 P.M. followed by a salute to the flag.

Chairperson Hamilton-Wood then read the following statement: "I would like to announce that the meeting is being held in accordance with the provisions of the Open Public Meetings Act. Adequate notice has been provided to the official newspapers and posted in the main hall of the Municipal Complex."

Upon roll call the following members were found to be present:

Councilman John Fratinardo	John T. Smith
Mayor Michael J. Muchowski	Mildred J. Hamilton-Wood
Thomas Napolitan	Gene DeAngelis
Dennis A. O'Hara	

ABSENT: Philip F. Stockhaus III
Sean Ryan

ALSO PRESENT: Solicitor Nancy T. Abbott
Planner Carl Hintz
Engineer James H. McKelvie (Substitute for Engineer Morris)

RESOLUTIONS

Resolution PB-2006-24

Dismissing without prejudice the application of James and Maria Tomosi for Minor Subdivision approval for Block 106, Lot 2.02, located in an RA Low Density Residential District.

Motion of Fratinardo, seconded by Smith to approve resolution PB-2006-24.

Upon roll call the Board voted as follows:

YEAS: Fratinardo, Muchowski, Smith, Hamilton-Wood, DeAngelis
NOES: None
ABSENT: Stockhaus, Ryan

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Resolution PB-2006-25

Denying submission waivers and deeming incomplete the application of Frank Scamporino for Minor Subdivision and Preliminary and Final Major Site Plan approval for Block 159, Lot 5.02, located in an HC Highway Commercial Zoning District.

Motion of Fratinardo, seconded by DeAngelis to approve resolution ZB2006-25.

Upon roll call the Board voted as follows:

YEAS: Fratinardo, Muchowski, Smith, Hamilton-Wood, DeAngelis
NOES: None
ABSENT: Stockhaus, Ryan

Resolution PB-2006-26

Continuing the application of Cream-O-Land, Inc. for amended Preliminary and Final Major Site Plan approval for Block 155.47, Lots 12.01 and 12.03, located in a GM General Manufacturing District.

Motion of Fratinardo, seconded by Smith to approve resolution PB-2006-26.

Upon roll call the Board voted as follows:

YEAS: Fratinardo, Muchowski, Smith, Hamilton-Wood, DeAngelis
NOES: None
ABSENT: Stockhaus, Ryan

Resolution PB-2006-27

Granting Minor Subdivision approval with variances to Helen Szathmary for Block 147.01, Lots 11 and 11.01, located in an RA Low Density Residential District.

Motion of Fratinardo, seconded by Smith to approve Resolution PB-2006-27.

Upon roll call the Board voted as follows:

YEAS: Fratinardo, Muchowski, Smith, Hamilton-Wood, DeAngelis
NOES: None
ABSENT: Stockhaus, Ryan

Resolution PB-2006-28

Granting amended Final Major Site Plan approval with front yard setback variances to Hapco Petroleum Corporation for Block 159, Lot 13.01.

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Mayor Muchowski stated that the Board asked Township Engineer Dan Guzzi to do a site visit. Engineer Guzzi's report dated June 5, 2006 identifies several deficiencies in the submitted plans including but not limited to additional fuel dispensing islands shown on Sheet 3, that were not included in the prior approval and the propane tank does not appear to be located in accordance with the amended plans. The plans should be revised to reflect the actual conditions.

Mayor Muchowski said that he didn't know if this was a technical issue from a drawing standpoint or an issue from the representation that was made by the applicant. Chairperson Hamilton-Wood stated that there had been discussion at the May meeting regarding the placement of the propane tank and there was some confusion as to which reference point was being used for the measurement.

Solicitor Abbott said that one of the reasons that the Township Engineer was sent to the site was to determine the safety of the present location of the propane tank. It appears from the report that Engineer Guzzi has no issue with the safety. He is just recommending that the plan be revised to show the present location of the propane tank.

Mayor Muchowski stated that obviously the applicant did not pay attention to the first approval that the Board granted them. He wants to make sure that this approval is consistent with what the entire Board thinks it is supposed to be. He said that before the Board votes on this approval he wants the Professional Staff to be sure that everything has been satisfied and is everything on the site where it is supposed to be.

Chairperson Hamilton-Wood asked if the Board could table the resolution. Solicitor Abbott stated that the Board could table the resolution. She said that it appeared to her from the report of the Township Engineer that there may some issues that would require the applicant to come back before the Board.

Mayor Muchowski referenced item 1 on Engineer Guzzi's report stating a discrepancy on the overlay/reconstruction of the existing pavement between the approved plan and the amended plan. He stated that the Board did not authorize this change to the plan. He said that he didn't want to approve something and have the applicant come back and say that the Board approved the plan.

Solicitor Abbott said that the Board has already acted on the application. The resolution is memorializing this action pertaining to the variance to the setback of the building. As far as what is in the report of the Township Engineer, once the site is looked at and it is found that it doesn't comply with the approvals then the applicant will have to come back to the Board.

Chairperson Hamilton-Wood stated that the concern is that the plans that were submitted as part of the amended site plan even though they verbally didn't asked for certain changes have been changed since the approved Final plans. The Board's concern is that

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by approving this resolution are they in fact approving those plans, which have substantially changed from the original Final approval.

Motion of Fratinardo, seconded by Smith to table resolution PB-2006-28. Motion unanimously approved by all members present.

Mayor Muchowski stated that there needed to be a coordinating meeting before this was put on an agenda. Solicitor Abbott stated that she would set up a staff meeting that would include the Township Engineer.

Board Clerk Erlston should send a letter to the applicant indicating that the resolution was tabled because of the possibility that the revised site plan does not comply with the previous approvals. Solicitor Abbott will contact the applicant to set up a meeting regarding this issue.

MINUTES

Motion of DeAngelis, seconded by Fratinardo to approve the Minutes of the regular meeting of May 15, 2006 as submitted. Motion unanimously approved by all members present.

CORRESPONDENCE

Motion of Smith, seconded by Napolitan to receive and file Correspondence A through H, J, K, M through P and R through T and to hold I, L and Q for later discussion. Motion unanimously approved by all members present.

OLD BUSINESS

Chairperson Hamilton-Wood called for application PB#2006-06 for Frank Scamporino. Applicant is requesting Minor Subdivision and Preliminary and Final Major Site Plan approval for construction of a 15,500 square foot retail center and a 2,000 square foot financial institution on property located at Route 130 and Harkins Drive, Block 159, Lot 5.02.

Chairperson Hamilton-Wood stated that a letter had been received from the applicant's attorney Robert Sexton requesting a continuance until the July 17, 2006 meeting of the Board.

Motion of Fratinardo, seconded by DeAngelis to continue the application until the July 17th meeting. Motion unanimously approved by all members present.

Chairperson Hamilton-Wood called for application PB#2005-13 for Cream-O-Land, Inc. Applicant is requesting amended Preliminary and Final Major Site plan approval with

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bulk variances for property located at 529 Cedar Lane, Block 155.47, Lot 12.01 and 12.03.

Chairperson Hamilton-Wood stated that a letter had been received from Cream-O-Land's attorney Arren Goldman requesting a continuance until the August 21, 2006 meeting of the Board.

Motion of Fratinardo, seconded by DeAngelis to continue the application until August. Motion unanimously approved by all members present.

NEW BUSINESS

Chairperson Hamilton-Wood called for application PB#2006-10 for TSMC, LLC. Applicant is requesting Final Major Site Plan approval for property located at Route 130 North and Fairbrook Drive, Block 166.12, Lot 12.

Solicitor Abbott stated that there were a number of submission items that the applicant had deemed as not applicable.

Member O'Hara recused himself and left the dais.

Gary Backinoff, attorney for the applicant stated that the Preliminary approval had been granted in September 2005. The applicant had received all the outside agency approvals as conditioned by the Preliminary resolution. He stated that they had received the review memos from the Board's Professional's and believes that they are in compliance with the requirements under those memos.

Solicitor Abbott stated that a submission waiver had been requested for submission of half cross sections of driveways and there are several items from the checklist that had not been submitted. She stated that the Board would have to act on completeness first.

Attorney Backinoff stated that in regards to any waivers the applicant had been in touch with the Board's Engineer and Planners office and Mr. Backinoff stated that he did not believe that any of the Board Professionals had any objections to any of the technical requirement waivers that the applicant is seeking.

Mayor Muchowski asked what the waivers were. Solicitor Abbott stated that the waivers were outlined in the Board Engineer's report and as part of the application checklist the applicant had submitted 3 pages of justification for either the waivers of the inapplicability of checklist items. Attorney Backinoff said that the memo from Alaimo dated May 31, 2006 outlines the area. Solicitor Abbott stated that most of these items were preliminary and were probably already submitted. As far as the submission requirements for Final Site plan, these had all been submitted.

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Attorney Backinoff referred the Board to Engineer Morris' memo dated May 31, 2006 on page 3 on the item regarding test borings to the water table; Engineer Morris recommended that the waiver be granted. Waivers were also requested for half cross sections at 50', preliminary delineation of stream encroachment, cross section of water courses. Engineer Morris indicated in his memo that he was agreeable to the requested waivers.

Mayor Muchowski asked if there had been any substantial changes from the approved Preliminary plan to the proposed Final plan. Attorney Backinoff stated that there was one change. At the time of Preliminary the applicant was seeking one parking spot less than what was required. The applicant's engineer was able to add the one parking spot to the plan so the variance is no longer necessary.

Engineer McKelvie said that on page 5 of the Engineer's report dated May 31, 2006 there is one item that was only partially satisfied. This was the wrong reference for the project location, item C page 5, under the vortex model 16000 storm water treatment system. This was not a submission item.

Attorney Backinoff said that Mr. Morris was saying correct the reference to Millstone New Jersey in the sizing summary sheet, which the applicant's engineer will do.

Solicitor Abbott stated that in her opinion all the submission items had been addressed and the application can be deemed complete.

Motion of Fratinardo, seconded by DeAngelis to deem the application complete. Motion unanimously approved by all members present.

Planner Hintz stated that in his memorandum dated June 15, 2006 there were several items that have been satisfied including items 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, and 4.8. Testimony is required for the free standing sign. Attorney Backinoff stated that there had been no modification from the preliminary submission which he thought that the Board had approved during the Preliminary approval. Chairperson Hamilton-Wood said that she thought that Planner Hintz was indicating that detail was not provided even though it states that it was provided with the architectural plans.

Greg Scozzari, managing partner for TSMC, LLC was sworn in by Solicitor Abbott. Mr. Scozzari stated that the sign detail had been provided on a previous set of architectural plans. Planner Hintz stated that this needed to be transposed onto the new set of architectural plans.

Solicitor Abbott said that per the Preliminary resolution there would be one free standing double sided sign by Route 130 perpendicular to the property. Brick pillars will support the sign. In addition to the main identity sign there will be signage slots for 8 of the tenants. The monument sign currently located on the property will be removed.

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Attorney Backinoff said that it appears that they just forgot to transpose the architectural information from the Preliminary plans onto the Final plans. It appears that there were no modifications, but they will submit these plans as a condition of approval for Planner Hintz' approval.

Mayor Muchowski asked Planner Hintz if he was comfortable with the proposed landscaping and the tree plantings. Planner Hintz stated that he met with the applicant's landscape architect and the plans had been modified.

Mayor Muchowski asked about consistency between the main building and the pad site. Solicitor Abbott said that she spoke with Attorney Backinoff about that and it was suggested that the architectural design of the pad site building be approved by the Board Planner prior to the issuance of the building permit.

The Board looked at the architectural sketches of the building. Mr. Scozzari stated that they did not have building elevations for the pad site yet because they do not have a tenant yet and the orientation of the building may change. He said that they had agreed in the Preliminary that the architectural design of the pad site shall be compatible with the other buildings of the site and the design of any structure on the pad site shall be approved by the Board. Attorney Backinoff stated that in regards to the pad site the applicant agrees that prior to issuance of any building permit they will return to the Board for approval of the design. The Board was agreeable to this.

Chairperson Hamilton-Wood stated that there had been a report from Water & Sewer Director David Lebak indicating that the latest set of plans does not show a date. Attorney Backinoff stated that the dates would be put back on.

Planner Hintz stated that prior to the issuance of a building permit architectural design for the pad site should be submitted to the Board.

Planner Hintz returned to the review of his report. Item 7 they have shown the mansard roof on the plans. Item 8 they need to ensure that on the pad site they will also show where the rooftop equipment is going.

Mayor Muchowski asked the applicant how they were addressing the affordable housing obligation. Attorney Backinoff asked what the ordinance requirement was. Planner Hintz stated that the growth share ordinance was adopted on September 7, 2005. This application received Preliminary approval on September 19, 2005. Planner Hintz stated that 30,000 square feet of retail space generates 1.2 affordable units. There is a contribution in the ordinance. Attorney Backinoff stated that they had just received the memorandum. To the extent that the ordinance was adopted and it was applicable they do not have any grounds to argue with the duly adopted ordinances.

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Mayor Muchowski said that the 1.2 units is a factor of what the end use is. If there is 30,000 square feet of office instead of retail the obligation could change.

Solicitor Abbott asked about the fence encroachment. Attorney Backinoff stated that the neighboring Vlahovic property has a previously constructed fence that encroaches onto the applicant's property. A letter has been sent on behalf of TSMC to the Vlahovics, which gives them a license to leave their fence there as long as it doesn't interfere with the approvals or the use of the property. Chairperson Hamilton-Wood asked if the property were to be sold would this agreement follow through to the new owners. Attorney Backinoff stated that this is a license not a permanent agreement. If in some time in the future there was some reason that the Board or the applicant was changing the use of the site and needed the area, then they could ask them to remove the fence. Solicitor Abbott asked for a copy of the informal license agreement for the file, this was marked as Exhibit A1.

Engineer McKelvie stated that Engineer Morris wrote a report dated May 31, 2006. On page 4 item 2c identifies a variance required for parking providing 4 off street loading areas where 5 are required. Attorney Backinoff stated that this was not parking but an off street loading area. Fran Goeke, applicants engineer stated that on the plan there are 2 loading areas behind each large building and 1 behind the pad site. The 5 loading areas are shown on the plan.

Mayor Muchowski asked if there was a limitation of the time for use of the loading areas. Solicitor Abbott referred to the Resolution for Preliminary approval and stated that truck delivery is only permitted between the hours of 8:00 A.M. and 6:00 P.M.

Mayor Muchowski said that there had been a limitation of the type of use permitted in the building closest to the residential development. He asked if both of the loading spaces on the back of that building were left on the plan. Mr. Goeke stated that they had left both spaces but had moved the spaces as far to the west as possible. Attorney Backinoff said that there was a condition stating that no cooking or preparing of food would be permitted in the Phase 2 building.

Engineer McKelvie returned to the engineer's review letter. Item 3a. references a design waiver for provided HDPE and ductile iron pipe for storm sewer pipe where reinforced concrete pipe is required. Engineer McKelvie stated that when he looked at the plan he sees reinforced concrete on the plans. Is a waiver still required for this?

Mr. Goeke stated that this particular comment was regarding around the building. The pipe that is not out on the roadway is polyethylene and the pipe that is in the roadway is cast iron. Solicitor Abbott stated that there was a waiver granted for storm sewer piping to be polyethylene. Engineer McKelvie stated that the engineer had indicated that the majority of the pipe is still reinforced concrete. Chairperson Hamilton-Wood asked if the applicant was not using the waiver that had been granted. Mr. Goeke stated that they

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were using the waiver – partially. Engineer McKelvie stated that where there is a roof drain it doesn't need to be 15" RCP. They are making it ductile iron where it crosses the road and HDPE where it doesn't cross the road. Engineer McKelvie stated that he would have no objection to this.

On page 5 item C this item regarding Millstone New Jersey has only been partially satisfied. Attorney Backinoff stated that this would be submitted. Item 9 state that the as-builts must be submitted.

On page 8 Item 27 is conditionally satisfied regarding the approval of the roof design by the Construction Code Official at the time of permitting. Item 30 regarding the easement for the fence encroachment. This has been satisfied by the testimony of the applicant that they had sent a letter of license to allow the adjacent property owner to keep the fence in its current location.

Motion of Napolitan, seconded by Fratinaro to open the meeting to the public. Motion unanimously approved by all members present.

Hearing no one wishing to speak motion was made by Fratinaro, seconded by DeAngelis to close the public portion. Motion unanimously approved by all members present.

Solicitor Abbott stated that the Board was looking for a motion to grant Final Major Site plan approval with the following conditions:

All the conditions that were attached to the grant of Preliminary approval, the architectural detail of the free standing sign shall be approved by the Board Planner, the architectural plan for the building on the pad site shall be approved by the Board prior to the issuance of the building permit for that site, any and all mechanical equipment on the roof top of any of the buildings on the site shall be shielded from public view, and compliance with COAH requirements.

Mayor Muchowski stated that the Board had talked to the applicant regarding the island on the entranceway into the development and the applicant had said they would contact Roma Bank regarding an agreement to maintain the island. Mr. Scozzari stated that he had not spoken to Roma Bank yet, but he would.

Motion of DeAngelis, seconded by Smith to approve application PB#2006-10 with conditions as previously stated.

Upon roll call the Board voted s follows:

YEAS: Fratinaro, Muchowski, Napolitan, Smith, DeAngelis, Hamilton-Wood

NOES: None

ABSENT: Stockhaus, Ryan

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The Board took a short break. The Board returned to the regular order of business.

Member O'Hara returned to the dais.

Chairperson Hamilton-Wood called for application PB#2006-13 for Orleans Homebuilders, Inc./Bustleton Estates South. Applicant is requesting Final Major Subdivision approval for property located on Bustleton Road, Block 170, Lot 1.01.

Rod Ritchie, Approvals Manager Orleans Homebuilders and Mike Citterone, Professional Engineer with Everland Shourds and Associates were sworn in by Solicitor Abbott.

Attorney Penberthy stated that this was an application for Final Subdivision approval. He stated that the subdivision has 3 low and moderate-income housing units that are being constructed on site. They did make a few changes to the basin in order to accommodate some of the residents in Burlington Township and some concerns that Burlington Township Engineers had raised. Attorney Penberthy asked Mr. Citterone to outline the changes.

Mr. Citterone stated that the road alignment had been kept the same. The proposed basin was shifted away from Bustleton Road as proposed by the Board Engineer and pulled it away from the proposed road to give more space between the road and the basin. As part of their conversation with Burlington Township Engineer they adjusted the spillway location and provided the stone trench detail to the plan. The only other changes to the plan were some minor lot line adjustments. There are some wetland pockets that they sought to avoid disturbing. The lots are still all conforming even with the lot line adjustments.

Attorney Penberthy stated that this was a 20 lot subdivision on 83 acres with 3 of the lots being low and moderate-income housing units.

Mayor Muchowski asked if there was a letter from the Burlington Township Engineer in concurrence with our Engineer that both sides are comfortable with the basin. Attorney Penberthy stated that they did not have a letter yet, but this could be a condition of approval.

Planner Hintz referred to his memo of June 14, 2006. In compliance with the Preliminary approval there were 5 conditions. Item 4.1 states that the affordable housing units must be adaptable for use with elderly and disabled persons. Attorney Penberthy answered that he has a letter from their applicant that they do comply. This letter was submitted as exhibit A1. Planner Hintz reviewed that letter and stated that this satisfies this issue.

Item 4.2 states that any reconfiguration of the proposed subdivision necessitated by the determination that the proposed septic system are inadequate shall include the affordable units. There has been no re-configuration so this is satisfied.

Item 4.3 deals with architectural drawings with the units. The applicant did provide dimension plans for the market rate units, however the affordable units are in a “sketch design”. These also need to be provided as scale drawings with dimensions, materials, roof pitch and other architectural details to satisfy this. Attorney Penberthy submitted the requested architectural plans for the affordable units. Planner Hintz stated that these plans appear to satisfy the requirement. There should be a condition that the affordable units are compatible to the market rate units.

Item 4.4 refers to the tree replacement requirements. A note has been added on sheet 9 indicating that 383 trees are to be removed and 427 trees will be planted. This complies with the ordinance.

Item 5.5 the invasive burning bush has been replaced with 2 native shrubs.

Item 6.2 neither the grading plan nor the landscaping plan shows where the tree protection fence will be located. This limit of disturbance should be added to the plans. Attorney Penberthy agreed to add this to the plan.

Mayor Muchowski asked about the Home Owners Association. Attorney Penberthy stated that there would be a HOA in place to maintain the basin, open space, and the landscaping buffer. These documents have been submitted to Solicitor Abbott for approval.

Chairperson Hamilton-Wood asked Engineer McKelvie to review the Engineers report. Engineer McKelvie referred to Engineer Morris’ letter dated June 15, 2006. Item 1 conservation easements should be shown on the plan and the required deed restrictions should be approved by the Board’s Solicitor. Attorney Penberthy stated that Engineer Morris’ letter stated the deed restrictions should be submitted before the issuance of Certificate of Occupancy. They will be submitting these earlier than this.

Engineer McKelvie stated the first 3 items on this report make reference to issuance of CO’s. Solicitor Abbott stated that this should be changed prior to filing the subdivision plan. Attorney Penberthy agreed to this.

Item 2 lots with dual frontages should be deed restricted in that access to lots would be permitted only from interior streets. The applicant agreed to this.

Item 3 cross easements should be provided for driveways on the COAH lots.

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Item 4 basin maintenance schedule prepared in accordance with the NJDEP practices. This should be made part of the Home Owners Associations rules. This should also be done prior to the filing of the plan.

Item 5 the proposed spot elevation at the center of the cul-de-sac bulb of both streets should be shown. Attorney Penberthy agreed to this.

Item 6 the as- built plans should be submitted. The applicant agreed.

Item 7 septic systems should be approved by the Burlington County Health Department. Attorney Penberthy agreed to this.

Item 8 Copies of the outside approvals should be forwarded to the Planning Board Engineer's office. The applicant agreed to this.

Member O'Hara stated that he had not heard a response to Item 4. Attorney Penberthy stated that the maintenance schedule is listed on the plan and it will be incorporated into the Home Owners documents.

Solicitor Abbott stated that there were 3 conditions attached to the grant of Preliminary approval that make reference to being revisited at the time of Final.

Condition 13 has to do with the recreation contribution in lieu of \$1,500 per lot with the exception of the 3 COAH lots. The condition states that the recreation contribution shall be finalized at the Final approval.

Attorney Penberthy stated that their interpretation of the ordinance is that there is no requirement for recreation in the Agricultural Zone. They therefore take the position that they are not required to make any contribution because they are not required to provide any active or passive recreation.

Solicitor Abbott stated that she and Mr. Penberthy had a discussion earlier about this issue and she prepared an analysis of the ordinance. Attorney Penberthy is correct in that the Agricultural Zone does not have specific standards for open space or recreation whereas the other residential zones do. However, Section 91-138 A sets forth that recreation and open space standards does include the Agricultural Zone in the general standards. So even though there are no specific percentages in the Agricultural standards of the Ordinance, Solicitor Abbott believes that this is an oversight and that the Board should be guided by Article 20 which is the recreation and open space standard. This provides for the number of units that the applicant proposes that active recreation requirement would be one playground. In lieu of providing a playground the applicant can make a contribution of \$1,500 per unit excluding the COAH units.

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Attorney Penberthy stated that he disagreed with this interpretation of the ordinance. Chairperson Hamilton-Wood stated that she thought that the Board would agree with Solicitor Abbott. The in lieu of contribution would be \$25,500. This will be a condition of approval.

Solicitor Abbott stated that there are 2 other conditions from the Preliminary approval that needed to be clarified. Condition 15 stated that the fencing and landscape buffer against the residential lots shall be determined at time of final. Attorney Penberthy stated that they had a discussion with some of the neighbors regarding Lot 1.21. This lot has a finger that comes back and adjoins their property line. If an agreement on price and mechanism can be met a portion of this lot would be conveyed to the 2 neighboring property owners. They are asking for an approval tonight but they may be coming back before the Board with a separate application for a subdivision that would carve out a parcel and add it to the neighbors. The lots would still be conforming. The applicant has provided a 15' planted buffer consisting of evergreens and holly trees. Planner Hintz approved of this buffer. This buffer would be subject to an easement which would allow the HOA to maintain the buffer if the individual homeowners did not. If an agreement is worked out with the adjacent property owners the applicant would amend the plan and amend the buffer only in that little finger of land.

Solicitor Abbott stated that the last condition was fencing and a guardrail around the detention basin. Attorney Penberthy stated that they did not provide fencing along the basin. They did provide landscaping. The basin has been pulled back from Bustleton Road so guardrails are not proposed. The County did not have a problem with this.

Mayor Muchowski asked about sidewalks, curbs and swales. Rod Ritchie stated that this development would be consistent with the Bustleton North development, which is sidewalk on one side with curbs, gutter and storm drains – no swales.

Mayor Muchowski stated that there was now only one issue. Chairperson Hamilton-Wood stated that she did not think it was an issue. The recreation contribution has been made a condition. The applicant either accepts the condition or moves forward with their next avenue. Solicitor Abbott stated that this condition was attached to Preliminary also. This condition has to be met before the signing of the final plan. Mayor Muchowski stated that if the applicant is knowingly going to challenge this condition why not hash it out before we grant approval. Solicitor Abbott said because the applicant might not challenge it. They may just accept the condition. Solicitor Abbott stated that Mr. Penberthy by objecting to the condition is preserving his ability to appeal the condition if they should choose to. There could be no allegation that he acquiesced to it.

Mayor Muchowski asked if they could build without complying to this condition. Solicitor Abbott stated that they could not. Attorney Penberthy stated that after the approving resolution is adopted the applicant has 45 days to file an appeal. If they don't file the appeal they lose the right to challenge it.

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Motion was made and seconded to open the meeting to the public. Motion unanimously approved by all members present.

Ronald Faga, 2018 Bustleton Road was sworn in by Solicitor Abbott. Mr. Faga asked to see exactly where the low income housing would be located. Mr. Citterone pointed out where the low income housing was. Mr. Faga stated that he was satisfied with this.

Motion of O'Hara, seconded by DeAngelis to close the public portion of the hearing. Motion unanimously approved by all members present.

Solicitor Abbott said that she had the ordinance section regarding the payment of the recreation funds. ½ of the required amount at the time of the signing of the plan and the balance per unit at the time of building permit.

Motion of O'Hara, seconded by Smith to approve application PB#2006-13 with the conditions as previously stated.

Upon roll call the Board voted as follows:

YEAS: Fratinaro, Muchowski, Napolitan, O'Hara, Smith, DeAngelis,
 Hamilton-Wood
NOES: None
ABSENT: Stockhaus, Ryan

Chairperson Hamilton-Wood called for Fine Foods and Spirits, Inc. Applicant is requesting Amended Preliminary and Final Major Site Plan approval for property located at 2120 Route 130 North, Block 165.01, Lot 11.02.

Attorney Edward R. Petkevis stated that the applicant is starting over. At the previous hearing the Board had determined that the proposed Final plan was not the same as the original Preliminary plan. The Board also did not like the fact that on side of the building was a fine restaurant and the other side sold package goods and chips.

The applicant took the comments that the Board had offered and altered that plan to what they thought was a nice site.

George Boghean, applicant, and Patrick Ennis, engineer with the firm of Lord, Worrell and Richter were sworn in by Solicitor Abbott.

Attorney Petkevis said that they are trying to accomplish a lot at this meeting. They would like to be deemed complete and receive Preliminary and Final approval all at the same time. Mr. Boghean has a liquor license that will expire in one year and cannot be renewed unless the restaurant is operational.

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Solicitor Abbott summarized the status of the application. The Preliminary approval was granted March 7, 2005. Final approval was considered by the Board and denied without prejudice because the plans had been significantly changed. The Preliminary approval included a storage area. When the Final approval was filed the storage area had been replaced with a bar area with packaged good sales. This is why the Final approval was denied. So the applicant is applying for Amended Preliminary and Final approval.

Solicitor Abbott stated that the Board's Professionals had a meeting with the applicant to redesign the floor plan to relocate the bar area. There will be no packaged good sales.

Attorney Petkevis directed the Board to the architectural design that was received on May 30, 2006. He stated that the revised floor plan takes out the coolers that were in the bar section, the shelving and aisles and adds a lobby area so that you can travel from one section to the other without passing through the restrooms.

Mayor Muchowski asked why the mechanical room wasn't next to the electrical and the pump and the office closer to the seating. He expressed concern with noise from the mechanical room disturbing patrons who were waiting for a table. Attorney Petkevis said that he believed that when the architect designed the plan he went to the building and worked around the fact that this was previously a machine shop and they had to make the best with what they had.

Chairperson Hamilton-Wood asked for a discussion on completeness. Planner Hintz indicated that other than the sign location the application is complete. Solicitor Abbott stated that variances had been granted pursuant to Preliminary approval. The change to the plan resulted in an additional variance.

Member O'Hara asked if the appropriate notice had been given for the new variances. Attorney Petkevis stated that they had listed all the previously granted variances in the notice.

Attorney Petkevis stated that when the plans were first prepared that sign detail had not been provided. They have indicated on the plan where the sign would be and sign details have been submitted. He stated that the sign will be located outside of the sight triangle 10' from the right-of-way line. No variance would be required for this.

Engineer McKelvie stated that the June 5, 2005 letter from Frank Morris indicated that the following submission waivers were requested: political boundary lines, test borings to the water table, sight triangles, curbs along the parking lot. Engineer McKelvie indicated that there was no objection to these waivers.

Mayor Muchowski asked where the curbing to be waived was located. Engineer McKelvie stated that it was on the east side of the site, closer to Bordentown. Mayor Muchowski said that it had been brought to the attention of the Township that there were

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potential drainage problems with the neighboring property. He said that he did not know if this was subsurface water or surface water. He asked if this could be corrected, by curbing if it exists.

Mr. Ennis stated that the property is graded to drain back toward the site to the inlets, which drain to the basin. A curb would be useless in terms of directing runoff. Mayor Muchowski stated that after the final grading the east side of the site would be higher than the west side. Mr. Ennis agreed with this statement and said that the inlets would be 20' from the edge of pavements. The inlets are 4' x 4'. There is no swale but the grass area will reduce the amount of runoff. Mr. Ennis stated that he was not aware of the drainage problem. Engineer McKelvie stated that the alleged problem might require the installation of swales.

Mayor Muchowski stated that the adjoining property owner was present at the meeting and would most likely be relating his concerns to the Board as well. Member O'Hara stated that these concerns had been brought to the Board's attention several months ago when work was being done prematurely.

Engineer McKelvie returned to the review letter. On Item 2o a waiver had been requested for the Road and Traffic Impact Statement. He stated that the applicant would be required to obtain DOT approval. Mr. Ennis stated that they had received DOT approval and he would supply a copy to the Board.

Motion of O'Hara, seconded by DeAngelis to deem application PB#2006-14 complete. Motion unanimously approved by all members present.

Mayor Muchowski said that the applicant was asking for Preliminary and Final approval tonight is the Board prepared to grant this? Chairperson Hamilton-Wood stated that typically the Board does not like granting both approvals at one time. She stated that if the Board members did not disagree they would try to get through the Preliminary approval at this meeting. The Board members agreed with the Chairperson.

Chairperson Hamilton-Wood asked Planner Hintz to return to his review letter. Planner Hintz stated that Item 6.11 indicated that the applicant/owner on the site plan does not correspond with the applicant/owner listed on the application. This should be amended.

Item 6.1.2 the submitted site plan does not indicate that variances were granted as part of preliminary approval.

Item 6.1.3 the proposed board on board fence appears to extend to the front setback line. Solicitor Abbott stated that the resolution permits it to be to the rear of the site triangle. (condition 18).

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Item 6.1.4 if the height of the proposed sign exceeds 15 feet than a variance would be required. Attorney Petkevis stated that the architectural showed a height of 25' but they would reduce this to 15' to avoid a variance.

Item 6.1.5 the site plan does not correspond to the architectural plans. This needs to be sorted out.

Item 6.2.1 the architectural plan showed two rear elevations where only one exists.

Item 6.3.1 the 8' chain link fence this shows on the site plan but not on the landscaping plans.

Item 6.4.1 the lights will be operated by a timer and will be turned off at a "reasonable time". A definitive time should be given for lights off.

Item 6.5.1 since there is no expansion of the existing building the applicant is not responsible for any growth share requirements.

Attorney Petkevis stated that all of the issues regarding to the plans could be easily addressed. On the issue of the lighting, Illusions bar is open until 2:00 A.M. and the lights go off at 3:00 A.M. The lighting would be no later than that. Chairperson Hamilton-Wood asked how late the restaurant would be opened. Attorney Petkevis stated that the applicant did not know what the hours of operation would be. Mayor Muchowski said that the applicant had previously stated that this is a fine restaurant with a lounge servicing the restaurant. Mr. Boghean should have some idea as to what the hours of operation would be. Attorney Petkevis stated that for the purpose of this application the closing time will be 2:00 A.M. and the lights would go off one hour after closing. Attorney Petkevis said that the closing time could be earlier depending on business. Mayor Muchowski stated that if the restaurant were to close at 11:00 P.M. there would be no reason for the lights to be on until 3:00 A.M. Attorney Petkevis agreed with this.

Member O'Hara said that the applicant should be made aware that the plans must be corrected and reviewed by the Board's Professional staff before any Final approval would be considered.

Engineer McKelvie returned to the Review letter from Engineer Morris dated June 5, 2006. Item 3a stated that the need for a variance for the number of parking stalls is no longer required.

Item 4 is completely satisfied.

Item 5 the applicant had requested a waiver for concrete curbing. Engineer Morris recommended that concrete curbing be provided throughout the parking lot. Attorney

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Petkevis stated that the applicant was hoping to avoid this due to the fact that the site will drain into the parking lot. Chairperson Hamilton-Wood stated that there was an issue with the drainage and the curbing could alleviate this problem. Solicitor Abbott stated that she had the minutes from the March 7, 2005 meeting at which Preliminary approval was granted. In the resolution Mayor Muchowski asked if the site would be curbed. Attorney Petkevis stated that the entrance would be curbed but the outside edge would not be curbed. Engineer Morris stated that this would allow the drainage to be directed to the inlets and not drain off site.

Chairperson Hamilton-Wood stated that she understands that this is the plan but there are two issues. One is that there is an existing condition that is creating a problem right now for a neighbor. The second is that the applicant's engineer indicated that the grass area is going to flow off the site. This has the potential to exacerbate the existing drainage problem. Engineer McKelvie stated that the drainage issue must be addressed. Member O'Hara said that the applicant's engineer should prove that what they want to do would work. Engineer McKelvie said that the Board should listen to the complaint from the neighbor and see if the problem can be alleviated.

Mr. Ennis stated that right now the whole site drains to the East. Once the site is built it will drain to the inlet except for the grass area. There will be a 2% (4 inches) slope back to keep the drainage from running into the neighboring property. Member Napolitan stated that he thought curbs should be installed. If there is a heavy rain it may all drain onto the neighbor's property. Attorney Petkevis stated that the entire area is currently draining onto the neighbor's property the re-grading of the site will improve this. Mayor Muchowski stated that the Board's engineer should determine what the best solution to the drainage problem would be.

The Board wanted to make sure that everyone involved understood the importance of this issue and made sure that a viable plan was submitted prior to approval of the Final plan.

Member O'Hara asked about the impervious conditions of the site. Mayor Muchowski stated that the impervious coverage would be increasing, however the applicant's attorney has represented that they may be improving the condition and meeting all the requirements. That is what the Board needs to determine.

Mr. Ennis stated that they are proposing a roof drain collection system that runs into the inlet and then to the basin. Snow removal will be pushed back to the basin.

Returning to page 5 of the review letter, Engineer McKelvie stated that the applicant had received some of the outside agency approvals but not all. He requested copies of all the approvals as they are received.

Page 6 Item 19 the Board had indicated that sidewalks along Route 130 were not necessary. Engineer Morris indicated that you might want to put in handicap ramps in

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case of future sidewalks. Chairperson Hamilton-Wood stated that the Board doesn't want to encourage pedestrian traffic along Route 130.

Item 20 indicates that the new plan must meet with the new stormwater management regulations be met.

Item 22 the architectural plan does not agree with the site plan.

Chairperson Hamilton-Wood asked about the letter from the Fire Official Kevin Mullen regarding the re-location of the fire connections to Route 130. She also referred to the letter from the Environmental Commission regarding the comment on excessive lighting.

Attorney Petkevis stated that the amount of the lighting was discussed previously before the Board. He stated that the plans had been revised in accordance to the Board's wishes.

Motion of Napolitan, seconded by Fratinardo to open the meeting to public comment. Motion unanimously approved by all members present.

John Drager, 2122 Route 130 was sworn in by Solicitor Abbott. Mr. Drager stated that the drainage onto his property has worsened considerably since the knockdown of the building. Mr. Drager stated that he had a surveyor survey the applicant's property. He stated that they would have to raise the applicants property approximately 47" to create the slope to direct the water back into the site.

Mr. Drager stated that he never had a water problem before Mr. Boghean started the site work on his property. Now there is water coming in to the front of his building. He swaled his own driveway to try to alleviate the problem. He said that he had 2 companies come out to try to dig his retention basin and they won't do it. They won't warranty it with all the water on site.

Mr. Drager stated that approximately 6 months ago representatives from Alaimo Engineers and Guzzi Engineers had come out to tour the site. He stated that 13" had eroded from the back right hand corner of the building.

Mayor Muchowski asked if it was a private action or a public action to address these concerns if they are substantiated. What is the Planning Board's obligation? Mr. Drager said that if the Board allowed preliminary site work it falls onto the Planning Board. Solicitor Abbott said to keep in mind that Preliminary approval was granted. The only think that was changing with the amended Preliminary approval was the interior floor plan and the fact that a storage area has been replaced by a bar. The Preliminary Site plan approval of the site has already been granted. The applicant can begin work at his own risk.

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Mayor Muchowski asked what is the jurisdiction of the Municipality other than Soil Erosion. Solicitor Abbott answered that there is really no Board jurisdiction. The Planning Board in granting Preliminary approval looked at the drainage calculations, the Engineer's report, heard testimony and looked at the plans and granted the approval. The only changes to the plan were to the interior of the building. Mr. Drager stated that the site plan has changed since Preliminary was given. The entrance was on the other side of the site on the Preliminary plan. Solicitor Abbott stated that the applicant could only develop the site as was approved by the Board on the Preliminary plan. Solicitor Abbott said that sometimes adverse conditions happen and it becomes a private, civil matter between neighbors.

Chairperson Hamilton-Wood stated that this was the Mayor's question. The Board prepares a plan and in between the approval and the finished product there is an adverse condition. Engineer McKelvie stated that the applicant has the responsibility to develop the site in a way the will not cause an impact on other property. Chairperson Hamilton-Wood stated that everyone understands this. The question is what is the Board's jurisdiction. Who is responsible for the damage that has been done?

Mayor Muchowski said that the applicant started work and Mr. Drager said that the state that the site is in significantly impacts the use of his property and is affecting him in finalizing his approvals. Mr. Drager said that he can't get his CO until his retention basin is dug and he can't get anyone to dig it. Solicitor Abbott stated that she felt that it would be appropriate for the Township Engineer to do a site inspection. Mr. Drager stated that both Alaimo and Guzzi had inspected on more than one occasion.

Mr. Drager stated that his understanding is that when you develop a site no water off of your site is allowed to impact a neighboring lot. Mayor Muchowski answered that post development cannot exceed pre-development. Mr. Drager stated that the water had never impacted him before. He asked who would prove this now with dump trucks bringing dirt and taking dirt away, there has been a house knocked down, a septic system ripped out of the ground, a huge fish pond and oil tanks removed. The whole site has been graded towards his property.

Member Smith stated that you should be able to take the pre-development elevations and the current elevations and you should be able to see. Engineer McKelvie said that he could find out what the site inspections resulted in and find out what the status is.

Mayor Muchowski asked Mr. Drager is he had ever officially put Mr. Boghean on notice about the drainage problem other than verbally. Mr. Drager stated that he had not put anything in writing.

Mayor Muchowski stated that some time ago the applicant tore the site apart and left it in a stated that is not conducive for meeting any set of approvals. What obligation does an applicant have and what remedy does the Board have if the applicant did push the dirt

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and created a situation where because of site work they are making the situation currently worse during the course of construction which has stalled. Who will document the fact that there is a problem?

Solicitor Abbott said that there is no easy answer. The application could be withdrawn at any time. There is an application pending now, but if the applicant decides that he is not going to do anything from his site that will require Board approval then he could do whatever he wants drainage wise and he doesn't have an application before the Planning Board then he would be subject to other sections of the ordinance regarding nuisance etc.

Member O'Hara asked if there was any of the black silt fence on the site. Mr. Drager answered that the silt fence just got put up way after the fact. When Alaimo and Guzzi walked the site they saw that there was no silt fence and called Burlington County Soil Conservation District. Chairperson Hamilton-Wood asked if it was the Board's responsibility to make sure that a neighbor is not being affected. Solicitor Abbott stated that the Board does not have enforcement powers. Member O'Hara stated that it becomes part of the construction code official's responsibility. Solicitor Abbott stated that the Planning Board grants the approvals but it is up to the Township to enforce ordinance requirements.

Member O'Hara asked if the Mayor and Council had seen reports from Engineer Guzzi. Mayor Muchowski stated that there had been conversations about the issue, but he hadn't seen anything in writing.

Mayor Muchowski said that his understanding was that the applicant is saying that they have done nothing to adversely change the water. Chairperson Hamilton-Wood said that there needed to be a determination as to where Mr. Drager should be directed to get some answers. Mr. Drager stated that he was directed by Mr. Brook, Mr. Guzzi and Alaimo's office to come to the Board meeting.

Engineer McKelvie asked what the date of the survey was. Mr. Smith stated that there was an approved Preliminary plan. This would have the elevations listed on it. Mr. Drager stated that work was done prior to the original approval. The applicant knocked a house down, took down dozens of trees, and took out septic tanks and oil tanks. The site has been inspected by OSHA and the EPA.

Mayor Muchowski stated that the applicant does have the right to do these things.

Mr. Ennis stated that the survey on the plan was from 2004. This should be the original elevations. Mayor Muchowski stated that currently the site is just a massive dirt pile. Mr. Drager stated that the fence people will not put up the fence; Stanley Paving can't finish the driveway. Mr. Drager says the 2 years ago there was no problem with drainage.

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Member O'Hara asked if the Town Engineer could take the original plans and the current plans and prepare a report for the Board. Mayor Muchowski said that the Board tends to agree with the complaint of Mr. Drager; the Board has to refer Mr. Drager to the correct department or individual to help solve the problem.

Mayor Muchowski said that now the applicant is aware of Mr. Drager's concerns. Attorney Petkevis stated that it would have been helpful if Mr. Drager had notified the applicant prior to the meeting of his concerns. He said that it was very curious to him that even though there had been a visit by the Township Engineer and the Board's Engineer there is no written report on it.

Mayor Muchowski said that he had advised Attorney Petkevis of Mr. Drager's concern at the meeting in February. Attorney Petkevis stated that the Mayor had asked them what they were doing about a citation from the soil conservation district. Attorney Petkevis stated that he had been unaware of the citation and the Mayor had handed him a copy of it at the meeting. This was the first notice the applicant had about the drainage problem. The citation was immediately addressed. The fine was paid and the silt fence was put up. Once the applicant was made aware of the problem he took care of it.

Attorney Petkevis stated that the first thing they need to do is to determine if the claims are legitimate. He said that there are personal issues between the applicant and Mr. Drager. He would like to see the reports from the field visit. Mr. Boghean will address any problems that he is aware of.

Mayor Muchowski asked Board Clerk Erlston to follow up with Administrator Richard Brook to contact Alaimo's office and Guzzi's office to determine what reports were generated from the field visits and get them to the appropriate parties.

Mr. Drager stated that when he appeared before the Board he was instructed to put up a chain link fence in the rear part of the yard. Should Mr. Drager put up the chain link fence to get his approvals. Should he finish putting up the chain link fence if it is going to be taken down and replaced with a board on board fence?

Mr. Ennis said that there would be a board on board fence from the back of the parking area to the setback line. This is different that Mr. Drager's 50' section. He should go ahead and install his chainlink fence.

Sharon Johnson, 2116 Route 130 North was sworn in by Solicitor Abbott. Ms. Johnson asked if there was any testing done for soil contamination when the oil storage tanks were removed from under ground.

Mr. Boghean stated that there had been an above ground oil tank that was actively leaking at the back of the property. This had been removed by the ex-owner. Everything else was heated by gas. Mayor Muchowski asked if the ground had been tested and

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found clean since the tank was actively leaking? Mr. Boghean said that the ex-owner removed it. Mayor Muchowski asked Mr. Boghean if he was saying that there were no underground oil tanks? Mr. Boghean answered that there were no underground oil tanks. He stated that he had removed two septic tanks. Mayor Muchowski asked if he had gotten the proper approvals for that. Mr. Boghean stated that he had a demolition permit. Mayor Muchowski answered that a demolition permit is typically for buildings. There is a specific requirement for abandoning a septic system. Mr. Boghean stated that he did not abandon them he just filled them with sand. Mr. Boghean stated that he also capped two water wells. Mayor Muchowski asked if Mr. Boghean had pulled permits or approvals to remove the septic tanks and the wells. Mr. Boghean stated that he had filed paperwork, but didn't say whom he filed it with. Mr. Drager pointed on the plan where the leaking oil tank had been located. He stated that this had not been taken out by the previous owner but by the applicant. Mr. Drager also indicated that there had been a 550 gallon oil tank under ground that supplied the front half of the building. Mr. Drager indicated that he had been doing work on the building for 7 years. He also indicated where the underground septic tank was.

Mayor Muchowski reminded the applicant that he was under oath.

Sophie Sklodowski, 2118 Route 130 was sworn in by Solicitor Abbott. Ms. Sklodowski stated that she had a similar concern with drainage from the site. She pushed a lot of dirt back to raise the ground so that she would not get drainage. Ms. Sklodowski stated that she had a surveyor come in to do a current survey of her property and the surveyor told her that there was oil running into her soil from the back of the applicant's property. She said that she was told that if she did not report the oil leak she could be fined as well as the applicant.

Member O'Hara asked if Ms. Sklodowski had reported the oil leak. She stated that she had not. Chairperson Hamilton-Wood stated that the Planning Board was not the proper entity to report an oil leak to. Mayor Muchowski advised Ms. Sklodowski to be sure that she is in compliance with what she is doing on her site. He stated that there are requirements that commercial property owners need to meet. Ms. Sklodowski stated that she only had a survey done. She had to have this done because Mr. Boghean claimed to own property on her side of the fence.

Motion of O'Hara, seconded by DeAngelis to close the public portion of the hearing.
Motion unanimously approved by all members present.

Mayor Muchowski asked if the Environmental Impact Statement addresses any of these issues during a submission? Solicitor Abbott stated that it does.

Solicitor Abbott stated that for the Preliminary Site plan approval that was granted last year soil borings were done and the Environmental Impact Statement was done.

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Member O'Hara stated that he did not remember a statement being made that these tanks were being removed. Chairperson Hamilton-Wood said that the applicant testified that he had not removed tanks. Now there is an issue on credibility and she doesn't know if the Board is capable of making that judgment.

Solicitor Abbott said that Mr. Drager had spoke at the March 7, 2005 hearing but the issues that he raised dealt with lighting and food waste. No drainage issues were raised at that time. Mayor Muchowski said that based on testimony there weren't any drainage issues at that time.

Chairperson Hamilton-Wood stated that the Board had received testimony and comments from that applicant and members of the public that are totally in conflict. Also some comments that may indicate that the Board has an obligation to report to other governmental agencies. She stated that she believes that the Board is treading in an area where it may be in a position to notify the DEP of potential oil spills and there may be Board of Health issues with the septic tanks.

Member O'Hara stated that the Board has heard the reports from their Professionals, the applicant is asking for Preliminary approval. He stated that he is hesitant to even grant that until Board Clerk Erlston contacts the government officials to get a report from Guzzi and Alaimo if such a report exists of what took place before.

Solicitor Abbott stated that a lot of issues had been raised that precludes the Board from acting until they know exactly what is going on with the property.

Attorney Petkevis stated for the record that this is the 5th or 6th time that they have been before the Board with this application. This is the first time in 3 years that they have heard about oil tanks, septic systems and drainage problems. There is not a shred of evidence to support any of the statements and all that it is doing is delaying the application and the application will die. He stated that it was a shame to see that a good project that will take a very unsightly area and make it something good for the town based upon completely unsupported allegations, where there have been 3 years to get the support but nothing is provided, that this will kill an application.

Mayor Muchowski stated that this application had spun wheels for months on end. Unfortunately the applicant said that he had a leaky oil tank and I removed 2 septic systems, but I didn't remove them I filled them with sand. Actions that were taken by the applicant have caused drainage situations. This is not the fault of the Board. Hopefully the paperwork that Mr. Boghean claims to have filled out was the appropriate paperwork. This is not a stall tactic. The Board has worked pretty hard with this applicant to bring this application to fruition. Unfortunately these issues have an impact. If there is contaminated soil on site, that is a legitimate concern for the well being of the community.

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Attorney Petkevis said that he was not suggesting that this Board in any way had acted improperly. He was concerned with the weight that was given to this testimony and wanted to point out the factual inconsistency. These are neighbors that were next to the property for 3 years since the property was purchased. Now for the first time without any prior notification whatsoever and without any evidence whatsoever the application dies and he wanted the Board to take this into account when you are considering delaying action on this. He stated that he didn't believe that the Board should at this point give any credence whatsoever to the testimony of the witnesses when they came here for the first time with a 3 year delay and no evidence.

Mayor Muchowski said that witnesses made statements that were given credence by Mr. Boghean. Attorney Petkevis answered that Mr. Boghean stated that he got the necessary permits. Mayor Muchowski said that he did not say he had gotten permits, he said he had filled out papers.

Attorney Petkevis stated that in regard to the oil tank Mayor Muchowski attributed a statement to Mr. Boghean that wasn't entirely correct. Mayor Muchowski stated that Mr. Boghean had said that there was a little bit of leakage on the ground. Attorney Petkevis said the Mr. Boghean had said that the previous owner had an issue this is not from Mr. Boghean's personal knowledge. Member O'Hara said that he thought the Mr. Boghean said that the previous owner removed the tank because it had a leaking issue. He said that there are inconsistencies with the applicant's testimony also, but based on the track record of this application and now this new application he will not be voting tonight.

Attorney Petkevis stated that they did have Preliminary approval conditioned on the storage areas not being used for any other use than a storage area. If they go back to the approved Preliminary plan, they can go forward with the Final approval. Attorney Petkevis stated that they would move forward with a restaurant on one side and the storage area on the other.

Chairperson Hamilton-Wood said that there may be a civil issue, but there is not a lot that the Board can do. Solicitor Abbott stated that when the applicant comes in for Final approval for the previously approved plan, provided that they have satisfied all of the conditions of Preliminary then they automatically get Final approval.

Member O'Hara asked if what was alleged tonight took place and there is contamination and the Board approves Final where does the Board stand. Chairperson Hamilton-Wood stated that it is not the jurisdiction of the Board.

Attorney Petkevis agreed to waive the time requirement for Board action.

Motion of O'Hara seconded by Napolitan to continue the application until the July 17, 2006 meeting.

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Mayor Muchowski suggested that the applicant schedule a meeting with the Board's Professional staff and with Engineer Guzzi to decide what to do.

Attorney Petkevis stated that it is their intention to withdraw this application and resort to the application where the Preliminary was granted. Chairperson Hamilton-Wood asked the applicant to not withdraw the application until the meetings with the Professionals.

Upon roll call the Board voted as follows:

YEAS: Fratinaro, Muchowski, O'Hara, Smith, DeAngelis, Hamilton-Wood
NOES: None
ABSENT: Stockhaus, Ryan

Chairperson Hamilton-Wood called for application PB#2006-15 for Quaker Group Burlington, II (Crossroads). Applicant is requesting an extension for Final Major Subdivision approval for property located on Florence-Columbus Road, Block 165.01, Lot 2.10.

Attorney Thomas Smith stated that he had a number of exhibits that he would summarize quickly. Crossroads was approved by Final Major Subdivision approval in 2 phases. Phase 1 in May 2003 and Phase 2 in July 2003. Three of the outside agency approvals that they had been working on were Burlington County Planning Board approval, Transit Works Authority permit and Bureau of Safe Drinking Water permit. Due to the restrictions from the NJDEP on the water allocation to the Township, submission of the water and sewer applications was delayed until late fall of 2005. The permits were issued in January and February of 2006. While all of this was going on the applicant was pursuing subdivision approval from the Burlington County Planning Board. One of the issues with Burlington County Planning Board was some improvements to Florence Columbus Road. The County had hired a consulting engineer to prepare drawings for the widening of that road and had requested that the engineers for Crossroads and Crossroads East tie into the County's road improvement plans. For a good 3 years they went back and forth with the County Planning Board and their consulting engineers because the applicant's engineers could not make their plans tie in with the County road plans. Basically the elevations did not match up. In the end it turns out that the County's engineers used incorrect datum for their elevations. Once they realized their error the applicant swiftly revised their plans and they received County Preliminary Subdivision approval in May 2006.

The 2 year protection under the Municipal Landuse Law expired in 2005, however there is a provision of the MLUL that provides that when the Final approval is conditioned on attaining of outside agency approvals and the applicant is delayed in obtaining those outside agency approvals the applicant is entitled to a one year extension without jeopardy to the 3 discretionary one year extensions that the Planning Board has the right to grant. The applicant is asking for the one year mandatory extension for the outside

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agency approval and one year discretionary extension from the Planning Board. This would bring them to May of 2007 for Phase 1 and July of 2007 for Phase 2 to get their site improvements done and finalize the all the requirements under the Final approval.

Solicitor Abbott stated that she had discussed this with Attorney Smith and asked him to bring documentation that all the permits had been filed in a timely manner and some proof that there were delays that were outside their control. Attorney Smith submitted the documentation and it was marked as Exhibit A1.

Attorney Smith briefly reviewed the Exhibit for the Board.

Mayor Muchowski asked if the applicant should have come before the Board previously to ask for the extensions. Solicitor Abbott said that the initial period is for 3 years. If the Board finds that there is undue delay that is outside of the applicants control then the Board has to grant the one year mandatory extension. The period of protection has run out in May 2006. The applicant is asking for a one year extension because they have been delayed in getting their approvals and they are asking for an additional one year extension.

Attorney Smith said that the initial approval pursuant to 40:55d 52A of the MLUL gave a 2 year protection from the date that the resolution of Final approval was adopted by the Planning Board. Then under section 52D they have the right of a one year extension of the initial 2 year period which would bring them up to date. In addition to that they are asking for one more year to bring them into 2007 so they can get the improvements done. The reason that they did not ask for this before is because under 40:55d section 52D the time for requesting the one year extension for failure to obtain outside approvals is the later of the original expiration date of those approvals or 90 days after you receive the last outside agency approval. The last outside agency approval was granted at the beginning of May 2006. Two weeks after they received that approval they filed the application for the extensions. Prior to that the request was not ripe because they did not have the approvals.

Solicitor Abbott stated that when Final approval is granted there is a 2 year period of protection. If they don't build in those 2 years and the Zoning Ordinance changes they are exempt to any changes for that period of 2 years. The statue provides that the Board can extend that period of protection. The Board can grant 3 one year extensions if they choose to. However, if the applicant has been prevented from proceeding with the project because of delays from other agencies that have jurisdiction, then if the applicant proves this than the Board has to give them the mandatory extension.

Mayor Muchowski mentioned an extension that had been granted to another applicant who then agreed to the new COAH rules. This is a different situation the other applicant had just let their approval sit whereas Crossroads has been precluded from moving on with their site improvements.

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Solicitor Abbott stated that the mandatory extension has expired for Phase 1 and will expire in July for Phase 2. The applicant could not ask for the extension sooner because they did not have the agency approvals. Solicitor Abbott stated that there is enough evidence that the Board has to retroactively grant the mandatory extension. The Board can give a total of 3 years in the discretionary extensions.

Member Fratinardo asked if the Board could deny the discretionary extension. Solicitor Abbott stated that the Board could deny this if they chose to. By not extending this you are not taking away the approval you are just taking away the protection from having to comply with any new standards if the zone changes. Mayor Muchowski stated that there are new standards on the COAH rules.

Attorney Smith stated that they had spent time addressing the COAH issue with the Township and has come to an agreement that provides the Township with probably a better outcome than if they complied with the ordinance in that they are paying a lot of what COAH fees up front at the signing of the final plat. He said that he thinks the Township is based on the agreement that they entered into with respect to Crossroads and Crossroads East is in at least as good a position as they would be if they were complying with the current ordinance.

Mayor Muchowski stated that this was not completely accurate. Attorney Smith stated that the fees that they arrived on were based on the new developers fee ordinance within the Township. Mayor Muchowski stated that the new ordinance requires that the obligation be met on site. He stated that the COAH ordinance requires \$120,000 per unit and for each proportional unit it is at \$13,000. He stated that Quaker Group is not at that type of number. Attorney Smith asked if there was an inclusionary zoning requirement within the zoning district that this development is located? Planner Hintz could not answer this without researching the COAH agreement.

Nick Casey, Quaker Group was sworn in by Solicitor Abbott. Mr. Casey stated that they had negotiated in good faith on the COAH issue on a time when the COAH ordinances had not been adopted and had reached a resolve before the Township would sign off on the TWA and the Bureau of Safe Drinking Water applications. He stated that a lot of time, effort and co-operation went into making that agreement. He said that Quaker had certainly made every effort to get all the final approvals resolved so that they could move ahead with this issue. He stated that he did not believe that it was appropriate to be penalized at this point in time because of continued problems that the County has had in the design of their plans. Some of the documents in Exhibit A1 show that the applicant pointed out to the County that their survey datum was off in 2002. The County would not acknowledge that until the fall of 2005. The revised plans from the County were not received by Quaker until February 2006.

Planner Hintz stated that the ordinance had been amended to require any developer of 5 or more units provide the units on site in any zoning district.

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Mayor Muchowski asked for a legal explanation of the time limits again. Solicitor Abbott stated that the applicant received Final approval in 2003. Final approval protects them from any changes in the Zoning Ordinance for a period of 2 years. Which means that the period of protection would extend until 2005. The Land Use Law provides that if there are delays in the permitting process that are out of the applicants control they are entitled to a mandatory 1 year extension, which would make it 3 years from the date of approval or May 2006 for Phase 1 and July 2006 for Phase 2. With the mandatory extension the protection for Phase 1 is already ended and Phase 2 will end in July.

The applicant is requesting an additional 1 year discretionary extension until May and July 2007. The applicant claims that the basis for this request is that they have had difficulty getting their permits and haven't been able to start their construction.

Chairperson Hamilton-Wood asked if the Board would have to re-do the entire site plan if they were to require on site COAH. Solicitor Abbott answered that they probably would.

Attorney Smith stated that in the fall of 2005 the applicant had a discussion with the Township with the applicability of the pending revisions to the zoning ordinance with respect to inclusionary zoning and the existing ordinance in the Township at the time which raised the developer's fee to 1% of the equalized assessed value. He stated that they spent a good 3-4 months negotiating with the Township and this was a pre-requisite to the Township signing of on the TWA and BSDW permits. This was also very closely related to the Final Subdivision approval from this Board for Crossroads East. At the time the possibility of these ordinances applying to Crossroads was specifically what they were trying to address in that agreement. He stated that he did expect that this issue would be re-hashed at this meeting since they had devoted so much time to this last fall.

Mayor Muchowski stated that negotiation on Phase 1 was based on their legal position and they made a compromised settlement on that. Now that protection has, in fact, expired.

Attorney Smith stated that the Final plat has already been submitted to the Township for Final review. The bonds are prepared and ready to be submitted.

Mayor Muchowski stated that there had been discussion back and forth between the applicant and Township Council regarding the COAH obligation and potential litigation regarding protections that the applicant had Phase 1 and Phase 2. At the time of the approval the Third Round COAH rules were not in place. Preliminary and Final approvals gave builders protection against the new round obligations, but Florence Township has to meet the State obligations based on the units the developers are going to build.

120.

Member O'Hara said that Attorney Smith had said that it was a comparable amount of money. Mayor Muchowski stated that now the requirement is for on site compliance. He agreed that the Township had negotiated for the fee last fall, but the problem still exists.

Mr. Casey stated that what the Mayor had said is correct about the new Third Round COAH. This was known last spring and there were a number of meetings and compromises that were made to address the Third Round issues and substantially more contributions were incorporated into an agreement, which was signed last fall with the Township. The circumstances have not changed. The Township knew what their Third Round obligation was last year before the negotiation. He stated that the applicant is still committed to the financial contributions that they are bound to by the agreement, which was reach with the Township. This is the greater of \$3,500 or 1% of the equalized assessed value at the time of the issuance of the CO for each unit within the community plus an additional \$1,000 per unit for each unit and there was an additional approximately \$27,000 that was added to round up to a minimum contribution of \$750,000 from this community to the Township for COAH related issues.

Member Smith stated that this would yield 6 units. Attorney Smith said that they would have to have a difference of opinion because Mr. Smith is basing it on the cost to construct a unit, but the developer is responsible to provide a subsidy (the difference between the cost to construct and the sale price to the affordable housing purchaser). Attorney Smith stated that the required fee in lieu of in the ordinance of \$120,000 is a very high estimate. It just doesn't cost that much to subsidize an affordable unit. Member Smith said that he was not talking about the developer, he was talking about someone who had to build the unit off site. Attorney Smith stated that the $\frac{3}{4}$ of a million dollars that they are contributing was to be used for alternative COAH arrangements rather than building on site. Member Smith asked how many units were being built at Crossroads. Attorney Smith answered 85 units. Planner Hintz stated that this would generate approximately 11 COAH units that the Township will have to construct off site.

Mayor Muchowski asked how the Board could protect the town so that this does not happen again. Member Napolitan asked if it was in the best interest of the Town to grant the extension and accept the developer's fee or to deny the extension and require the developer to provide the 11 units on site?

Attorney Smith said that he appreciated Member Napolitan's position and offered that the \$750,000 could be used for a rehab unit where the town would get a discount. The whole purpose of this fee was for the Township to attempt to come up with more creative ways to address the affordable housing issue instead of forcing all developer's to provide the units on site.

Attorney Smith requested a continuance and stated that he would like to have a meeting with representatives of the Planning Board to continue discussing the COAH units.

121.

Chairperson Hamilton-Wood stated that she would like to vote on the mandatory extension and then table the discretionary extension.

Attorney Smith stated that the applicant would waive any time requirements.

Motion of Fratinardo, seconded by O'Hara to grant the mandatory extension.

Upon roll call the Board voted as follows:

YEAS: Fratinardo, Muchowski, Napolitan, O'Hara, Smith, DeAngelis,
Hamilton-Wood
NOES: None
ABSENT: Stockhaus, Ryan

Motion of Fratinardo, seconded by Smith to continue the discretionary extension.

Upon roll call the Board voted as follows:

YEAS: Fratinardo, Muchowski, Napolitan, O'Hara, Smith, DeAngelis,
Hamilton-Wood
NOES: None
ABSENT: Stockhaus, Ryan

OTHER BUSINESS

Township ordinance No. 2006-15 amending the grading plan ordinance.

Motion of O'Hara, seconded by DeAngelis to approve the above amendment and recommend adoption by Township Council. Motion unanimously approved by all members present.

Solicitor Abbott stated that she would not be at the July meeting due to a personal commitment. Dave Frank will cover the July meeting for Solicitor Abbott.

Chairperson Hamilton-Wood stated that someone from the Board should attend some of these meetings.

CORRESPONDENCE

Member Smith asked about the Craft Stewart development. Planner Hintz's letter said that it was 86 lots. It is 85 building lots and 1 open space lot.

Motion of Fratinardo, seconded by O'Hara to move to closed session. Motion unanimously approved by all members present.

122.

The Board returned to the regular order of business.

Motion was made and seconded to adjourn. Motion unanimously approved by all members present.

John T. Smith, Secretary

JTS/ne