

The regular meeting of April 11, 2005 of the Washington Township Planning Board was called to order by Chairman Jones at 7:40 p.m.

MEMBERS PRESENT

- CLASS IV: Mark Bauerlein, Charles DiSalvo, R. Gregory Jones, Kathleen McGroarty, Howard Popper
- ALTERNATES: Sam Akin
- CLASS I: Geoffrey Price
- CLASS II: Eric Trevena
- CLASS III: Kim Ball Kaiser
- OTHERS ABSENT: Leavens, Mont
- STAFF PRESENT: Engineer Hall, Clerk Kesper, Planner Banisch, Attorneys Buzak and Cofoni; Geo-Technical Consultant Oweis

\* ARRIVED LATE

Adequate notice of this meeting was sent to the Observer-Tribune and the Morristown Daily Record on January 15, 2005 and posted on the Bulletin Board on the same date. Five notices were mailed, as there were five requests.

**\*\*NO NEW CASES OR WITNESSES SHALL BE HEARD SUBSEQUENT TO 10:30 PM\*\***

Pledge of Allegiance

**MINUTES**

1. Minutes from the March 14, 2005 Regular Meeting

Ms. McGroarty made a motion to approve the minutes, seconded by Mr. Popper. A voice vote was taken; Mr. Bauerlein and Mr. Akin abstained all others were in favor and the motion carried.

**RESOLUTIONS**

05-11 Valley Shepard – Block 35, Lots 6 & 8 – Fairmount Road – R-5 Zone – 119.751 acres – Approval of Request for amendment to fencing plan under Resolution 03-27 (granting preliminary and final Site Plan with variances for Sheep farm with barn, shed, labor housing, milking area, cheese production, aging cave, retail store and related facilities

Mr. Price stepped down due to a conflict of interest.

Mr. Trevena made a motion to grant the requested one-year extension, seconded by Mr. Bauerlein. A roll call vote was taken:

Ayes: Bauerlein, DiSalvo, Kaiser, Jones, McGroarty, Popper, Trevena Nays: None Abstentions: None Absent: Leavens, Mont Ineligible: Price, Akin

05-15 Brown – Block 25, Lot 28 - 30 Maple Lane – R-20 Zone, .5 acres – Approval of Minor Site Plan for Conditional Use Home Occupation – Hair Salon

Ms. McGroarty made a motion to approve resolution 05-15, seconded by Mr. Price. A roll call vote was taken:

Ayes: DiSalvo, Jones, Kaiser, McGroarty, Popper, Price, Trevena Nays: None Abstentions: None Absent: Leavens, Mont Ineligible: Bauerlein, Akin

05-16 Resolution in support of Transportation Enhancement Grant

Mr. Price made a motion to approve resolution 05-16, seconded by Ms. McGroarty. A roll call vote was taken:

Ayes: Bauerlein, DiSalvo, Jones, Kaiser, McGroarty, Popper, Price, Trevena, Akin Nays: None Abstentions: None Absent: Leavens, Mont

The meeting was opened to the public for items not on the agenda. There were no questions or comments from the public and the meeting was closed to the public.

**DECISIONS ON COMPLETENESS**

None

**APPLICATIONS**

- 1. Claremont Village – Block 28, lot 18.02 – Request for amendment to Resolution 04-18 Approval of preliminary site plan for 29,600 sf shopping center – for changes to soil disturbance permit (condition N-5 (iii))

Stephen Scriaretta, Applicant

Ms. Kaiser, Mr. Jones, and Mr. Akin stepped down due to a conflict of interest as property owners with 200' of the property.

Mr. Sciarretta stated that the project is in the middle of bringing soil on site. They now are in the process of acquiring soil from a site 1 ¼ mile away on East Mill Road within Long Valley and he was asking for a waiver of the testing of the soil, as it is a wooded site. The property is Block 36 lot 50, across from Sherwood Trailer Park and has never been farmed. The owner is building a home and needs to move 2000 yards of soil off site, which is the amount of additional soil the applicant needs. He stated that the previous soil brought to the site was tested. It will take 1 – 2 weeks and 100 to 150 15+-yard dump trucks to move the soil.

Mr. Hall generally agreed with Mr. Sciarretta and stated that from engineering prospective he did not object to waiving the condition for this particular soil from the specific location.

Mr. DiSalvo made a motion to approve the soil movement as discussed this evening without requiring soil tests, seconded by Mr. Trevena. A voice vote was taken:

Ayes: Bauerlein, DiSalvo, McGroarty, Popper, Price, Trevena, Akin

Nays: None Abstentions: None Absent: Leavens, Mont

Ineligible: Leavens, Jones, Kaiser, Akin

2. US Homes – Block 19, Lots 5, 6, 7 – Schooley's Mountain Road and Newburgh Road – Musconetcong Valley Senior Overlay Zone – 123 Acres – Request for Minor Subdivision, Preliminary Site Plan and variances for existing setback and signs for 360 Senior Citizen Units – –Deemed Complete October 27, 2004 – Previously Heard October 27, 2004, December 7, 2004, December 13, 2004, January 10, 2005, January 26, 2005, February 14, 2005 and February 26, 2005, March 14, 2005- Public Hearing Continued – Expires April 14, 2005

Joel Kobert, Applicant's Attorney

William Hamilton, Applicant's

Michael Savage, Applicant

Wayne Lucas, Applicant's project manager

Wayne Lucas was sworn in by Attorney Buzak.

Mr. Lucas referred to exhibits that were marked A-29 (perspective sketch of the front entrance feature) and A-30 (a section of the entry detail and sight entrance). The concept is more rustic and antique. He pointed out the wall features that you would see in older estates. Along Schooley's Mountain Road there will be a dark stained four-rail horse fence, which would extend for 120'. The fence would be brought into the site and would also be planted with at least 4" caliper trees. Behind the fence would be flowering meadows and in front of the fence would be mowed lawn. There would be four flat signs two on each side in a dark copper.

For a total square footage of 54 sf. The railings would be wood. He agreed to meet with Dr. Keller regarding the wildflower mix.

Issa Oweis arrived and joined the meeting.

Mr. Lucas answered Mr. Hall that the masonry wall would be 4' high.

Mr. Hall stated that within the sight triangle nothing could be over 2'. He also noted that the signs proposed is approximately half of the sign square footage allowed by ordinance.

Mr. Kobert answered Ms. McGroarty that the US Homes logo would be removed from the sign after the development is sold out.

The board accepted the sign as presented and testified to this evening.

Dr. Oweis stated that the issue regarding limestone has been resolved as far as he was concerned with the exception of loose material found at the site. The applicant's engineer is designing a plan to mitigate. There is no need for further investigation.

Mr. Banisch brought up a concern of Dr. Keller regarding the geologic synthetic matting and clay lining. Dr. Keller preferred the clay lining.

Dr. Oweis stated that with either medium 1 to 1 ½ feet of soil must be put on top of the medium for grass to grow.

Mr. Kobert stated that the applicant agreed to get both Dr. Keller and Dr. Oweis's approval.

Dr. Oweis stated that the medium could not be porous.

Dr. Oweis answered Mr. Hall that the basin #2 must be moved. In the event that the applicant cannot move the basin, there are very expensive construction methods that could be used.

Jeffrey Schaumbeurg – was sworn in by Attorney Buzak and presented his qualifications to the board.

Mr. Schaumbeurg stated that the basin #2 would not be an infiltration basin and that it would be lined and any required grouting would be done prior to construction. They do not plan to move the basin. If a sinkhole opened up they would have to mitigate further.

Dr. Oweis did not disagree with the mitigation but that existing sinkholes would have to be grouted before the basin is constructed.

Mr. Schaumburg stated that the applicant agreed to this and would work with Dr. Oweis.

Dr. Oweis answered Mr. Hall that infiltration pipe in the northwest corner of the site where there is thick over burden would be permitted.

Mr. Kobert stated that the applicant agreed to the conditions suggested in the Whitestone report including a full time geo-technical investigator on site during construction.

The meeting was opened to the public for questions on the geologic testimony heard this evening.

There were no questions or comments and the meeting was closed to the public for questions and comments on the geologic testimony.

Dr. Oweis left the meeting.

Mr. Lucas referred to a photograph of the current site conditions, which was marked A-31. A-32 was a sketch using the photograph with the improvements superimposed on them.

Mr. Savage pointed out the existing farmhouse and the building that would be removed if the property to the south of this project were to be developed by US Homes.

Mr. Lucas stated that A-33 was three cross sections of Schooley's Mountain Road.

Mr. Savage explained each of the profiles. He noted that it was a third of a mile from the first building to Schooley's Mountain Road. He answered Mr. DiSalvo that you would not be able to see the mechanicals on the roofs of the buildings from Schooley's Mountain Road because of the angles.

The board stated that these exhibits had been very helpful in getting the perspective of the mass and height of the development.

Mr. Lucas and Mr. Savage answered Mr. Banisch that the buildings are in scale with the photograph taking into account grade and distance.

Mr. Kobert addressed the traffic light at Newburgh Road and Schooley's Mountain Road and noted that the applicant is rebuilding the intersection. He stated that the applicant is also willing to contribute ½ of the cost of the light up to \$100,000 for capital costs.

Mr. Kobert stated that regarding emergency services the applicant is willing to contribute \$150,000 towards an ambulance, give two acres of property next to the industrial buildings on Newburgh Road and build a two-bay sub station

building with approximately 500 sf of meeting/open space on the two acres up to a maximum cost of \$100,000. He answered Mr. Banisch that this emergency services contribution was to fulfill the ordinance requirement to provide ambulance service.

Mr. Kobert stated that the applicant, in lieu of constructing 1500 - 2000 linear feet of sidewalk would make a contribution of \$50,000 to the township sidewalk fund.

Mr. Kobert stated that the applicant would grant an easement to the township along the length of the river for a walking path. They will supply a handicapped access at the river if the DEP allows it. He confirmed that there would be public access to the trails to the river.

Mr. Banisch stated that the Master Plan calls for a substation in this location.

Mr. Buzak explained the township ordinance regarding contract and emergency ambulance service.

Mr. Kobert agreed with Mr. Buzak and confirmed that the applicant would contract with an ambulance squad for non-emergency services.

Mr. Kobert stated that the applicant would agree to a condition in the resolution that if the applicant acquires adjacent property and the warrants for a light at the applicants intersection with Hastings Square were met, they would agree to install that traffic light at their expense.

Mr. Kobert stated that regarding possible additional right of way acquisition for the Schooley's Mountain Road improvements he would get this information to the board prior to the next meeting.

Mr. Buzak addressed the COAH obligation. He stated that this issue was discussed with the Township and it was decided to have the applicant comply with the new COAH regulations as well as accept an additional 5 units for a total of 45 age restricted units with 315 market units.

Mr. Buzak reviewed the letter from the Schooley's Mountain Fire Department letter that stated that the applicant had addressed the SMFD concerns but also stated that the Department does not have two pieces of equipment that would be optimum. He explained that the letter goes on to note that these vehicles are available through mutual aid. He stated that the applicant has met ordinance requirements and building code requirements. Every fire department cannot have all the emergency vehicles and that is the reason for mutual aid to fulfill these needs in time of emergency.

Mr. Kobert reviewed the fire protection being provided noting that all of the buildings have fire protection sprinklers and roof vents as requested by the

Schooley's Mountain Fire Department. He distributed two pages of sections that were marked A-34 and A-36. A-34 showed the buildings and how far the fire truck ladder could reach. Exhibit A-36 showed the air handlers. He will supply this information to the fire department.

Mr. Trevena explained how the height of a fire truck ladder is measured.

Mr. Kobert stated that the sketch would be revised based on the information supplied by Mr. Trevena information.

Mr. Buzak stated that based on the applicant's donation of a tract of land the application would have to be amended to be include this as part of the minor subdivision.

Mr. Hall addressed the phasing of the project and the applicant's request to construct the detention basins prior to all permits and conditions of the resolution being met. DEP MCSCD, MCPB should be received where they affect the detention basins.

Mr. Kobert stated that the HMUA believes they will have their water permits by January. The entire development is contingent on being hooked up to HMUA for water and sewer except for one well which will be for replenishment of the retention permits.

Mr. Hall referred to the April 11, 2005 letter from the Board of Health.

The meeting was opened to the public for questions and comments on the application.

There were no questions or comments and the meeting was closed to the public for questions and comments on the US Homes application.

Mr. DiSalvo made a motion to instruct the board attorney to draft a resolution of approval including all variances and waivers discussed and subject to the six outstanding issues. Seconded by Ms. McGroarty. A voice vote was taken; all were in favor and the motion carried.

The meeting was adjourned to April 27<sup>th</sup> meeting for review and discussion on ROW acquisitions for widening of Schooley's Mountain Road, minor subdivision amendment for the emergency services property, who is going to own the river front easement, size of substation, handicap access to river, SMFD review of the exhibits shown this evening and phasing and construction prior to all conditions.

Absent: 10/27 DiSalvo, Leavens (listened 12/13)

Absent: 12/7 Leavens (listened 12/13)

Absent: 12/13 McGroarty

Absent: 1/10 None

Absent: 1/26 None

Absent: 2/14 – DiSalvo, McGroarty

Absent: 2/23 – None

Absent: 3/14 – Leavens, Bauerlein

Absent: 4/11 – Leavens, Mont

**DISCUSSION/ CORRESPONDENCE**

Mr. Price stated that he had a conflict of interest on several of the discussion items and left the meeting.

Mr. Banisch left the meeting during the recess.

1. T. M. Group – Block 42, Lot 12 Stop Work Orders under Preliminary Resolution 01-36 Conditions CC (measurements of neighbor pond) and GG (tree cutting)

Archibald Reid, Applicant's Attorney, Ted Maglione, Applicant and Philip Hackenberg, applicant's forester was present.

Mr. Buzak explained that this matter has come to the planning board from the Township Committee to deal with the conditions listed above. The Township attorney letter of March 24, 2005 sets forth what is before the board. He explained that the Planning Board does not issue stop work orders, the Township Committee does through the Township Engineer who happens to be the same as the Planning Board Engineer. He stated that the Planning Board is not an enforcement board. The township engineer issued a stop work order on March 18, 2005 at which time work on the development was stopped. This Board was to consider the matter at the March 23, 2005 meeting, which was cancelled as a result inclement weather. He explained that because of the cancellation various conversations took place among the applicant's attorney, Township Committee and Planning Board attorney. As a result of the discussions the Township Committee issued the March 24th letter. The letter reads that the township concluded that it is not reasonable to keep an entire job shut down until the Planning Board makes a decision. He read the conditions listed in the letter. The applicant accepted the conditions of the letter and the stop work orders were lifted. He advised the Board that the hearing tonight is to deal with the conditions CC and GG of the resolution.

Mr. Hall explained the reason for the stop work order under GG regarding tree removal and read the condition. On March 16th he was informed that trees in freshwater wetlands had been cut and that he had no knowledge of an approved forest management plan. Regarding condition CC, measuring of the pond on the Scudese property, he had not received documentation that the Scudese's had refused the developer permission to do so. He referred to the letter from Attorney Lamb that denied access to the developer that he received after the stop work order was issued. He answered Mr. DiSalvo that the DEP violation letter was because of the DEP being informed of the tree cutting. He stated that a forest

management plan generally allows tree removal in the wetlands. It was his opinion that this was a separate issue.

Mr. Reid distributed copies of the resolution, etc to the board.

Mr. Buzak stated that the condition is complicated because of the fact the applicant does have an approved forest management plan by NJDEP to allow for the cutting of trees. If the applicant meets the criteria in the state statutes they can do woodland management to meet the farm assessment requirements. He stated that this plan is not approved locally, but by the state DEP. It is the applicants' contention that the township cannot interfere with approved state plans. The further complication to this issue is this cutting has taken place within the open space easement that was granted to the township in the terms of the development approval. The additional question becomes whether the cutting of trees even if not a violation of all of the conditions of the resolution is a violation of the open space easement to the township. He stated that it has been the practice of the township to allow woodland management and agricultural uses within open space easements. He noted that the cutting of trees is not included as an agricultural use except upon land that is exclusively for trees and forest product and not unless other conditions are met. The other conditions are approved woodland management plan and a landowner or forester annually inspects and applies for farmland assessment.

Mr. Reid stated that he did not know at the time of the resolution that a woodland management plan would be applied for. At the end of the resolution the remedy for trees being removed was no further building permits until tree replacements were made.

Philip Hackenberg was sworn in by Attorney Buzak and stated that he is an approved state forester. He prepares the plan as well as performs the tree removal. He stated that in January 2004 his firm prepared a forest management plan which provide a plan of action to meet the requirements of the farmland assessment act and meet the objectives of converting the old agricultural land into woodland and improving wildlife habitat and protection. The plan was prepared and submitted to the state and township tax assessor. Once the plan was approved in July 2004 by the state they scheduled the tree cutting which was done on December 23, 2004. He testified that the tree cutting consisted of harvesting in two acres that was highly overstocked. The trees amounted to four cords of firewood. The tree cutting was completed on the ground with a chainsaw and no other equipment. The gathering process involved an individual gather the wood and taking it to a pick up truck, no equipment was used. He stated that this was not excessive cutting. He testified that this activity is an exempt wetlands activity. He stated that Mr. Sumba of the DEP was on site last week and determined that no violation occurred. He referred to a stand location map included in the woodland management plan, which had been distributed to the board previously.

Ted Maglione was sworn in by Attorney Buzak.

Mr. Maglione answered Mr. DiSalvo that he did not talk to the township engineer about this prior to the tree clearing because the open space deeds allowed for agricultural activities he did not believe he needed the Township Engineer's approval.

Mr. Buzak answered Mr. Jones that the Board's charge or obligation in this matter is to interpret this condition of the resolution. He also stated that he was not aware of a forest management plan when the resolution was drawn. The typical reason for this conditions is because of the fact that during the course of development construction trees come down for roads, houses, etc. which is what the engineer reviews. There was no intent to deal with woodland management plans or non-development conditions.

Mr. Popper stated that it appears that this is question of pre-emption and asked if there is any statute or case law that deals with the issue.

Mr. Buzak stated that there are no direct statues or case law on this issue. The Township Committee has asked the Planning Board to give recommendation that woodland management is an activity that would be permitted in an open space easement.

Mr. Buzak suggested a two-step decision – Condition GG tree removal does or does not apply to the open space easement but to development activities.

Mr. Jones agreed that the condition was for tree removal as part of the development and not as a condition for the open space easement and woodland management plans.

Ms. McGroarty concurred with Mr. Jones, but noted that this is the first time something like this has occurred since she was on the board.

Mr. Bauerlein agreed but was concerned with the DEP violation.

Mr. Maglione stated that Mr. Sumba stated that he would have a letter in the next three weeks stating that a violation had not occurred.

Mr. Hackenberg answered Mr. Jones that all conditions of the agricultural exemption for woodland management have been met.

Mr. Akin stated that he is involved in agriculture and four cords of wood is not very much, it just meets the income requirement.

Ms. Kaiser concurred and stated that there was another incident where the forest management plan overrode steep slopes and the conservation easement.

Mr. DiSalvo stated that it was his opinion that the condition would give the board control over the entire project and was shocked that the applicant had not spoken to the township engineer before the tree removal was done.

Mr. Buzak answered Mr. Jones that this is standard tree removal language for most resolutions.

Mr. Hall stated that taking the opinion that the tree removal condition is just for the area of development, it would allow an applicant to take down the remaining trees outside the area of development.

Mr. Reid stated that if they were turning it into a farm they could do so.

Mr. Jones agreed that if it was in a woodlands management plan or agriculture purposes it could be done.

Mr. Reid stated that the open space lot was protected from development with the open space easement to the township.

Mr. Buzak reminded the board that if property is not before the board trees could be cut within existing regulations.

Mr. Buzak stated that there is no requirement for notice or public participation on this application and it was the Board's decision to let the attorney for the objects speak on the issue.

Attorney John Lamb referred to his letter of April 11, 2005 and stated that he disagreed with Mr. Buzak regarding public participation and notice to the public. He stated that the issues before this board is his clients drainage and flooding situation and that when you cut down trees there is a potential for flooding. It was his opinion that the condition said all trees, no exception. He read page 29 of the woodland management plan. He stated that there was no approval given by the township to cut down the trees on the open space lot. He reviewed the timeline of the forest management plan. He noted that the township has interest in the property. He read from the open space easement "preserve the present natural condition" and paragraph 5B regarding cutting trees and increase in flooding. He thought the township would have to sign the forest management plan as a co-applicant. He referred to the engineering testimony presented to the board at the time of the application by the applicant. He stated that there is flooding onto the Scudese property and the pond is silting.

Mr. Buzak referred to and read from the open space easement referred to by Mr. Lamb. He advised the board that they could make a recommendation to the Township Committee with regard to a violation of the easement. The township has the right to enforce its easement. The Planning Board can only interpret the resolution, not the easement.

Mr. Reid stated that this is a regulated activity by the DEP and it was his opinion it would not be allowed if the DEP were concerned that it would cause flooding.

Mr. Hackenberg said that the woodland plan has a ten-year plan. He agreed to submit the plan to the township engineer prior to any further tree cutting.

Mr. Jones suggested that the applicant agree to no further tree cutting.

Mr. Hackenberg stated that the trees removed would not increase runoff because it is making the forest healthier. He referred to page 28-29 of the plan and what occurred was timber management without equipment to disturb the ground. This plan would not create flooding on adjoining properties.

Mr. Jones asked Mr. Maglione if he would hold off on the forest management plan until the project is complete.

Mr. Maglione stated that to have farmland assessment it has to be farmed every year.

Mr. Hackenberg suggested moving the woodland management to an area of the property further from the adjoining properties.

Mr. Buzak answered Mr. Jones that the Board must be careful about the scope of the board's jurisdiction and not make determinations that are the Townships jurisdiction.

Mr. Hackenberg stated that they would submit a plan and mark the trees for the engineer for tree cutting and amend the plan if requested by the engineer, but not agree to do no tree cutting at all.

Mr. Buzak stated that this was as much as the applicant could agree to.

Mr. Hackenberg answered Mr. Hall that the tree removal that was done did not put any holes in the tree canopy. Future activity would also not open the canopy.

Mr. Jones suggested that the board can interpret the condition strictly that forest management plan cutting must be reviewed and approved by the township engineer with the assistance of the township environmental consultant.

Mr. Hackenberg answered Mr. DiSalvo that the surrounding areas are looked at when developing a woodland management plan.

Mr. DiSalvo wanted any plan to take into consideration first the runoff impact to the adjoining property. The optimum health of the forest at this time should not be the first consideration.

Mr. Jones made a motion that Condition GG applies to all trees to be removed including those trees in any farmland and woodland management and must be marked for the township engineer inspection. Seconded by Mr. Bauerlein.

Ayes: Bauerlein, DiSalvo, Jones, Kaiser, McGroarty, Akin, Popper, Trevena  
Nays: None Abstentions: None Absent: Leavens, Mont, Price

Mr. Reid wanted a determination on the trees removed in December.

Mr. Buzak suggested that Mr. Hall could look at the tree removal and if the engineer did not agree that they should have been removed, then a tree remediation plan would be submitted and planted prior to the next building permit.

Mr. Akin suggested that the board make a determination that the past tree removal was under the woodland management plan and not require the township engineer to inspect or require a remediation plan and make the condition regarding the prior approval of the township engineer a requirement from this point forward.

Mr. Hackenberg answered Mr. Jones that the trees removed were approximately 6" caliper.

Mr. Akin made a motion that the township engineer approval of the woodland management plan be required from this point forward and not for the tree cutting that was done on December 23, 2004. Seconded by Mr. Bauerlein. A roll call vote was taken:

Ayes: Bauerlein, DiSalvo, Jones, Kaiser, McGroarty, Akin, Popper, Trevena  
Nays: None Abstentions: None Absent: Leavens, Mont, Price

Mr. Jones stated that the board will send a memo the Township Committee suggesting that they look into whether the tree removal was a detriment to the wetlands and drainage in the area.

A resident asked why no replacement was required. They are down hill from the property and were concerned about the runoff. She asked if anyone from the board or committee walked the site recently. She was concerned with mosquitoes and standing water this summer.

Mr. Hall stated that he was there about 10 days ago and he did not observe flooding but that there was surface water around the red maple trees. He did not see flooding or erosion down stream.

Mr. Buzak stated that the board voted to make this condition prospectively. Under the recommendations to the Township Committee that if they find that there is a detrimental affect the township could demand a tree replacement.

Frank Carfaro – was concerned with the overflow of the detention basins. He never had this type of water before, flooding his basement and washing out his driveway. He stated that other neighbors across the street are also having flooding problems. He asked the board to look at the properties during the next rain.

The meeting was closed to the public for questions and comments.

Mr. Popper made a motion to make the suggestion to the Township Committee that they look at the easement for detrimental affect on drainage with an eye towards possible remediation actions including the replacement of trees. Seconded by Mr. Bauerlein. A voice vote was taken; all were in favor and the motion carried.

Mr. Lamb asked that the Township Engineer measure the pond. As it relates to condition CC.

Mr. Buzak read the condition CC regarding the pond.

Mr. Hall stated that he does not have the tools to do the measurements. He suggested an independent engineer. He would provide names.

Mr. Reid objected to this resolution, the neighbor did not allow them on the property.

Mr. Buzak stated that who takes the measurements is not clear in the condition. It was broad enough to let anyone go out and do the measurements.

Mr. Lamb referred to his letter of May 2004 stating the applicant could not go on the Scudese property but that suggested the township engineer be allowed to do it.

Mr. Jones asked the applicant and Mr. Lamb if the applicant's engineer could measure the pond if accompanied by the township engineer.

Mr. Reid stated that this was a condition for last year, before construction not at this time.

Mr. Lamb agreed to let the applicant's engineer or third party engine with Mr. Hall measure the pond.

Mr. Hall answered Mr. Jones that this measurement would not be moot at this point as the development will be on going for another two years or so. It was his opinion that this would still be a valid point.

Mr. Maglione asked about the impact of the Scudese's building up their driveway.

Mr. Hall stated that the resolution addresses this issue in the language that any sedimentation would be dredged and it does not say anything about who it is caused by.

Mr. Lamb answered Ms. McGroarty that in his letter of May 26, 2004 on page 4 first paragraph, stated that the Scudese would allow the township engineer or third party to take the measurement. He stated that the applicant could go within 48 hours. He answered Mr. Buzak that the pond has not been measured before today.

Mr. Jones and Mr. DiSalvo reviewed the letter and the condition regarding consent of the Scudese and the fact that the letter stated the applicant could come onto the property and the condition was clearly prior to the start of construction.

Ms. McGroarty and Mr. Popper agreed.

Mr. Lamb stated that if condition GG and replanting could be put prospectively, then this condition could also go forward.

Mr. Buzak stated that the boards' comments are well taken and the resolution is clear. He stated that this resolution has been challenged successfully, with subsequent approvals and unsuccessful challenges. The objectors could have raised this issue at other times and they have not raised this issue. It is clear the measurement was to be made prior to the start of construction, which was eight months ago, and we are passed that. The applicant was denied access to the pond.

Mr. Hall explained how the stop work order happened, because he did not have documentation that this condition was fulfilled.

Mr. DiSalvo made a motion that the board finds based on the documents submitted and testimony heard that condition CC of Resolution 01-36 is void. Seconded by Mr. Bauerlein. A roll call vote was taken:

Ayes: Bauerlein, DiSalvo, Jones, Kaiser, McGroarty, Akin, Popper, Trevena  
Nays: None          Abstentions: None          Ineligible: Price          Absent: Mont,  
Leavens

## 2. Vouchers

Mr. DiSalvo made a motion to approve the vouchers found in order by the Chairman and send same on for payment, seconded by Mr. Popper. A voice vote was taken: all were in favor and the motion carried.

## 3. 2<sup>nd</sup> Annual Morris County Municipal Economic Development Summit – May 18, 2005 – The Skylands at Randolph

Noted for the Record.

4. U.S. Department of Housing and Urban Development Booklet on "Why Not in Our Community?" – Removing Barriers to Affordable Housing

Noted for the record.

5. April 8, 2005 correspondence from Howard Popper RE: Highlands

Noted for the record without comment.

Mr. Popper made a motion to adjourn, seconded by Ms. Kaiser. A voice vote was taken; all were in favor and the meeting was adjourned at 12:15 p.m.

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Virginia R. Kesper