

Florence, New Jersey 08518-2323  
December 19, 2005

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 this meeting is being held in accordance with the provisions of the Open Public Meeting 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 Muchowski	Mildred Hamilton-Wood
Thomas Napolitan	Gene DeAngelis
Dennis A. O'Hara	

ABSENT: Phillip F. Stockhaus, III

ALSO PRESENT: Solicitor Nancy T. Abbott  
Board Engineer Frank Morris  
Board Planner Kate Fullerton

Chairperson Hamilton-Wood called for the presentation of the long range facilities plan for the Florence Township School District.

Steven Siegel from the Spiegle Group stated that the Department of Education requires all school districts to submit a Long Range Facilities Plan every five years. The School Board is required to submit a copy to the Planning Board for review. The Planning Board is not required to act on the plan, but can submit any questions, comments and concerns.

Mr. Siegel gave an overview of the plan including the addition of the new High School, closing of the Duffy School and a list of repairs that have been scheduled.

The report also compares the projected enrollment for each school in the district to determine if the schools are undersized.

Member Napolitan asked what the projected enrollment for the next year would be. Mr. Siegel stated that the enrollment for Roebing was projected as 531, the existing Middle School will be for 4<sup>th</sup> and 5<sup>th</sup> grades and is projected as 291 students, the existing High

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School will be for 6<sup>th</sup>, 7<sup>th</sup>, & 8<sup>th</sup> grades and is projected as 467 students. The new High School is projected at 471 students. The capacity of the new High School is 700 students.

Planner Carl Hintz arrived at 7:40 P.M.

Member O'Hara asked if the construction of the new High School was on schedule. Mr. Siegel stated that it was on schedule and plans to open September of 2006.

Member Napolitan asked if there were any new schools projected to be built. Mr. Siegel stated that no new schools were planned the projections were for systems. Member Napolitan asked what the projected costs of the systems were. Mr. Siegel stated that the projected costs were 2.8 million dollars. This allows for upgrades to various items including gym lighting, ventilation in locker rooms, walk in freezer, boilers, electrical upgrades, etc.

Mr. Siegel stated that the plan had not been approved by the Department of Education yet. They can't create any projects until this is approved.

Member Napolitan asked if new buses would be purchased or if the bus parking area would be expanded. Mr. Siegel stated that the new bus depot would be at the new High School. There is no projection for purchasing new buses in the plan.

Member O'Hara stated that there is the possibility the Holy Assumption School may be closed by the Diocese of Trenton. The school currently has an enrollment of approximately 120 students grades K through 8. Mr. Siegel stated that Roebing school is currently maxed out. There is room at the middle school and they may have to have 3<sup>rd</sup> grade moved to the middle school with the 4<sup>th</sup> and 5<sup>th</sup> grades.

Chairperson Hamilton-Wood asked Solicitor Abbott what the procedure would be. Solicitor Abbott stated that the Board could vote to acknowledge and accept the Long Range Facilities Plan. She stated that the Board doesn't have to accept the plan, but they can't change it. Member Fratinardo stated Mr. Siegel said that the Board did not have to vote on this plan. Solicitor Abbott stated that this presentation was out of courtesy. She stated that in the past the Board did take a vote and adopted a resolution regarding the Plan. Member Fratinardo stated that he would prefer to not vote on this. Especially due to the fact the last time the School Board presented a Plan and the Planning Board approved it, the School Board came back and said they needed to build a new school.

Mr. Siegel stated that the Long Range Facilities Plan was a living document and could be changed at any time.

Member Smith expressed concern over the capacity of the auditorium.

Motion of Muchowski to acknowledge and receive the Long Range Facilities Report as presented on behalf of the Florence Township Board of Education, seconded by O'Hara. Motion unanimously approved by all members present.

## RESOLUTIONS

### **Resolution PB-2005-42**

#### **Granting Preliminary Major Subdivision Approval to Atlantic Equity Olive Street, LLC, for Block 147.01. Lots 1 & 16 located in an AA Active Adult Residential District.**

Solicitor Abbott stated that there are some changes that needed to be made to this resolution. For the record she stated the following changes:

On page 3, item 3b second sentence will read: The berm will be constructed jointly by the applicant and ReadyPac. It will be at an approximate elevation of 66.0 feet. The following text should read : 12' above the finished first floor of the residences.

On page 4, the first line at the top of the page will read: The Home Owners Association will be responsible for maintenance of landscaping on the applicants side of the berm.

Paragraph 6 should read: at the Township's request there will be sewer easements on the properties

Condition 8 add to the end of that : and subject to the modification that the cul-de-sac shall remain as shown on the plan.

Condition 9B should read: in the event that ReadyPac does not construct its portion of the berm, the berm shall be constructed by the applicant pursuant to the ordinance requirements.

Condition 19: All landscaping on the applicants side of the berm shall be maintained by the Home Owners Association.

Condition 20: The applicant shall investigate the possibility of relocating the northern entrance to realign with Fifth Street pursuant to the review and approval of the Board Planner and Board Engineer.

Condition 22: The applicant shall comply with all the provisions of the Developer's Agreement between the Township of Florence and Atlantic Equity Olive Street, LLC dated May 4, 2005.

Condition 23: Pursuant to the aforesaid Developer's Agreement the applicant shall provide within the town house portion of the development the required 14 affordable

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housing units plus 3 additional affordable housing units for a total of 17 affordable housing units.

Motion of Fratinardo, seconded by Smith to approve PB-2005-42 as amended.

Upon roll call the Board voted as follows:

YEAS: Fratinardo, Muchowski, Napolitan, DeAngelis

NOES: None

ABSENT: Stockhaus

**Resolution PB-2005-43**

**Continuing the application of Peoples Savings Bank for Preliminary and Final Major Site Plan approval for construction of a parking lot on Block 58, Lots 3 & 4, located in an NC Neighborhood Commercial District.**

Motion of Muchowski, seconded by Smith to approve Resolution PB-2005-43.

Upon roll call the Board voted as follows:

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

NOES: None

ABSENT: Stockhaus

**Resolution PB-2005-44**

**Continuing the application of Orleans Homebuilders, Inc. (Bustleton Estates South) for Preliminary Major Subdivision approval for Block 170, Lot 1.01, located in an AGR Agricultural District.**

Motion of Fratinardo, seconded by Napolitan to approve Resolution PB-2005-44.

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

NOES: None

ABSENT: Stockhaus

**Resolution PB-2005-45**

**Granting submission waivers and deeming incomplete the application of Harold M. Boston for Preliminary Major Subdivision approval for Block 147.01, Lot 3.03, located in an RA Low Density Residential District.**

Motion of Muchowski, seconded by Fratinardo to approve Resolution PB-2005-45.

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

**Resolution PB-2005-46**  
**Granting Final Major Subdivision approval to Craft Stewart, LLC, for Block**  
**156.01, Lot 2, located in an RA Low Density Residential and SM Special**  
**Manufacturing Districts.**

Solicitor Abbott stated that she had the following amendments to this resolution.

Condition 15 – a sentence will be added stating pursuant to agreement at the time of Preliminary approval the applicants COAH contribution will be in the amount of \$35,000 per unit plus 1% of the assessed value of each unit.

Add a condition to provide a water and sewer connection for the future baseball field improvements.

Lauren Beadle, from Ballard Spahr, attorney representing Craft Stewart stated that she had viewed a copy of the minutes regarding the COAH agreement. She said that she could not reach Mr. Penberthy by phone, however in her opinion there may have been a misunderstanding regarding the COAH contribution. She stated that the regulations do not allow for both a development fee of one percent and \$35,000 for each COAH unit. It has to be one or another.

Chairperson Hamilton-Wood asked Solicitor Abbott if the Board could vote on this resolution. Solicitor Abbott stated that the Board could vote. Mayor Muchowski said that he would not vote on this. The Preliminary approval was given at a time where COAH came to the forefront. He stated that there was a concise and clear conversation where Craft Stewart agreed to pay both. He stated that the COAH ordinance had since been amended to require a contribution of \$120,000. This is based on the regional cost of building an affordable housing unit. Mayor Muchowski suggested tabling the resolution until there is agreement between the parties.

Chairperson Hamilton-Wood asked if the Board needed agreement to approve the resolution. Solicitor Abbott stated that they had the minutes from the January 2005 meeting where the approval had been granted. The applicant is interested in having the resolution approved at this meeting so they can begin to get their permits. If they feel that the condition was wrongly opposed then they can come back before the Board in an attempt to get the condition removed.

Chairperson Hamilton-Wood stated that she did not want to clog up the Board with clean-up work that was unnecessary.

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Solicitor Abbott read the minutes from January 17, 2005 for the application for PB#2004-09 for Craft Stewart for Preliminary Major Subdivision approval for Block 156.01, Lot 2 as follows:

“Attorney Penberthy agreed that they were proposing a COAH contribution per unit plus 1%.”

Solicitor Abbott stated that Attorney Penberthy had reviewed a copy of the Draft Resolution but did not recall making the statement.

Attorney Beadle stated that she had been unable to reach either Mr. Penberthy or her client. Mayor Muchowski said that he would prefer to table this resolution until later in the evening to allow Ms. Beadle to reach her client or Mr. Penberthy.

Mayor Muchowski asked Ms. Beadle what she thought had been agreed to. Ms. Beadle stated that as far as the resolution goes, the draft that they saw stated that the client had agreed to pay the 1% of assessed value, not both that and the \$35,000 per affordable unit.

Ms. Beadle agreed to table this resolution until later in the meeting.

Member O’Hara asked where the Board would be if they were to approve the draft resolution. Solicitor Abbott stated that the Resolution reflects what the Board approved and a combination of the testimony given at the hearing. A condition of Final approval is always compliance with the Preliminary approval. She said that she did not know if the tape of the meeting was still available, but the minutes reflect that the applicant had agreed to the \$35,000 plus the 1%. Mayor Muchowski stated that he would have voted against the plan, which was part of the issue because of the change in the COAH rules that was delineated during the course of their application. Ordinances had been past at the Council level. The applicant did not want to resubmit with the COAH requirements to be fulfilled on-site, therefore they agreed to do both in an effort to move the application along through the Preliminary approval process.

Chairperson Hamilton-Wood stated that in her opinion the Board should allow Ms. Beadle to attempt to contact her client or Mr. Penberthy.

## MINUTES

Motion of O’Hara, seconded by DeAngelis to approve the minutes from the regular meeting of November 21, 2005 as presented. Motion unanimously approved by all members present.

Motion of Muchowski, seconded by Fratinardo to approve the minutes from the special meeting of November 28, 2005 as presented. Motion unanimously approved by all members present.

## CORRESPONDENCE

Member O'Hara stated that correspondence B & C have to do with the Whitesell/Hiros issue. Mr. Hiros is in attendance and Member O'Hara suggested that the Board discuss this. He also stated that Correspondence M & N needed to be discussed.

Motion of Muchowski to receive and file Correspondence D, E, F, G, H, I, J, K, and L seconded by O'Hara. Motion unanimously approved by all members present.

Chairperson Hamilton-Wood asked the Board to consider Correspondence B, C, and C1 regarding Whitesell and Hiros. She asked Solicitor Abbott what the Board's jurisdiction was in this matter. Solicitor Abbott stated that it was her opinion that the Board had no jurisdiction in this matter.

Solicitor Abbott stated that as part of the hearings on Whitesell's development of the Haines Center there was an issue raised by Mr. Hiros regarding adverse drainage conditions that were negatively impacted his property. Terrence Huettl who appeared at the hearing for Whitesell had agreed on behalf of Whitesell to do whatever he could to alleviate the drainage concerns. She stated that she believed that there were some attempts made but the drainage problem continued.

Engineer Morris stated that Whitesell would survey Bustleton Creek to delineate the silt buildup that was from the Light Rail culvert. Engineer Morris stated that he felt the problem was that Mr. Hiros believed that Whitesell agreed to remove the earthen roadway and the old culvert.

Engineer Morris stated that he had toured the site and saw that the culvert has been removed. Mayor Muchowski asked if the earthen roadway had been removed. Engineer Morris stated that only a portion had been removed. He stated that there is now more area of flow to go through. He stated that he does not think that removing more of the earthen road will solve the problem.

Mayor Muchowski said that Solicitor Abbott had stated that from a legal standpoint in her opinion Whitesell has fulfilled their obligation under any agreements that were made with this Board. Engineer Morris said that from an engineering standpoint he also is of the opinion that Whitesell has fulfilled their obligations.

Chairperson Hamilton-Wood asked if Mr. Hiros should be permitted to speak and if they had to open the issue to public discussion. Solicitor Abbott stated that Mr. Hiros should be allowed to address the Board, however the resolution granting approval from the November 19, 2001 hearing, reflects that in response to Mr. Hiros' testimony Mr. Huettl acknowledged that the drainage pipe under the railroad should be enlarged. Engineer Morris stated that he did not think that this had been enlarged. He also stated that Whitesell would do what they could to improve the drainage on the site.

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Solicitor Abbott stated that in her opinion the Board has done what they were required to do to attempt to follow up on testimony from the hearing. Anything further is appropriately between Mr. Hiros and Whitesell on a private level.

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

John Hiros, owners of Bung's Tavern stated that he was not the bad guy in this issue. The correspondence that he sees refers to Mr. Hiros challenging Whitesell. He stated that the Board was required to support the approved resolutions and hold the applicants to them.

Mr. Hiros stated that in 2001 Whitesell executives promised to do certain things. These things were stated in the minutes and appear in the resolution. He said that he did not want to discuss the merits of the conditions that were agreed to 4 years ago. He said that the conditions have not been met. Mr. Hiros quoted from the Planning Board minutes from November 19, 2001.

"It is Whitesell's intention to eliminate the road and the culvert as soon as the new creek crossing is installed."

"Whitesell will be removing the culvert and the associated road that approaches it and removal of constriction of the creek will not remediate any area that has been silted over in the creek. That is something that would require extensive environmental permitting, it is not an easy thing to do."

Mr. Hiros stated that the last statement is an opinion. No one has told the Board what a true cost for this would be. Mr. Hiros returned to quoting the minutes.

"Mr. Huettl related that the area has been surveyed and the creek bed does continually climb all across the Whitesell property. There is not a physical dam in the creek. Information has been submitted regarding grading of the creek and the cross section shows that the creek continues to climb away from the river."

Mr. Hiros said that he thinks the Board has just heard that this was not true. Documents that were submitted in 2001 were inaccurate. Mr. Hiros asked Engineer Morris if Whitesell had called him to report a 9" obstruction in the creek. Engineer Morris stated that he did not remember this. Mr. Hiros stated that he had sent a letter to Engineer Morris confirming their meeting and mentioned the obstruction in his letter. Mr. Hiros again quoted from the minutes.

"Mayor Muchowski stated that Whitesell is providing sealed engineering drawings and testimony that indicate that their flows and conditions are as shown, if these are false or inaccurate, then Mr. Hiros has a case."

Mr. Hiros then quoted from the approving resolution memorialized on 1-22-02.

“Terrance Huettl acknowledged that the drainage pipe under the railroad should be enlarged and Mr. Huettl testified to the applicants plan to improve the drainage on it’s site by removing silt and similar blockage and regarding Bustleton Creek and the area immediately upstream and downstream of the existing creek culvert on his property as permitted by the New Jersey Department of Environmental Protection.”

Mr. Hiros stated that he did not think that Whitesell had asked for DEP approval to clean up the stream. Mr. Hiros returned to quoting from the resolution.

“The applicant has submitted certain documents and plans or drawings and has provided testimony at the time of the public hearing on this application and the Board has relied upon the same in making its determination. Should the applicant deviate from this resolution or the conditions contained herein, or from the submitted documents, plans, drawing, and/or statements made which are part of the application, the Board may proceed to rescind this approval.”

“The applicant shall provide a detail of the end treatment of the proposed culvert.”

Mr. Hiros asked if Whitesell had turned in a final report on the culvert. He stated that the documentation he had just read illustrated that as a condition of approval Whitesell had agreed to remove the small culvert. They did not do this. A storm occurred and the culvert collapsed and then it was removed. Mayor Muchowski stated that this was one of the points of contention at the last meeting. He asked Mr. Hiros if he agreed that the culvert had been removed. Mr. Hiros stated that they have done one thing and they promised to do 4 things. They agreed to removed silt and debris upstream and downstream for the culvert site. Mr. Hiros said that Whitesell had not done this. Whitesell stated that there was no obstruction to the free flow of the water. Mr. Hiros said that now he was under the impression that there was an obstruction.

Mayor Muchowski stated that he thought that there had been a site investigation that both Mr. Hiros and Whitesell had been a part of and that some of these areas were addressed. Engineer Morris stated that the silt that was surveyed was still there. What silt had been removed was where the culvert and the associated earthen berm around the immediate culvert area had been removed. Mayor Muchowski asked Mr. Hiros what his point of contention was. Mr. Hiros said that he would finish his statement and then state his point of contention.

Mr. Hiros said that due to an act of God or nature a heavy rainfall and flood washed out or collapsed the 3’ concrete culvert blocking Bustleton Creek. The resulting flooding could have flooded Mr. Hiros’ property or Route 130. Due to this emergency Whitesell brought in equipment to remove the culvert pipe and graded an opening. The new opening for Bustleton Creek was not determined by an engineer but by a heavy

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equipment operator. Mr. Hiros wondered if this opening was the right size to carry the flow. The DEP was not consulted and there was no DEP permit. Mr. Hiros thinks that Whitesell could afford to get a DEP permit. Mr. Hiros stated that Engineer Morris and an environmental specialist both indicated that much of the stream bed cleaning could be done by hand and does not require a permit.

Mr. Hiros stated that he does not believe the conditions of the resolution have been met.

Mayor Muchowski stated that the 2 Board professionals indicated that they feel that Whitesell has met the conditions of approval.

Mr. Hiros asked if the stream had been cleaned out. Engineer Morris stated that it had not. Mr. Hiros asked if Whitesell had turned in a report as required by the resolution and if the road had been removed. Engineer Morris answered that they had not done these things. Mr. Hiros stated that these were all conditions of approval and it was the job of the Board to enforce these items.

Mayor Muchowski stated that we have been going around and about over this for years and the Board is getting conflicting reports. He suggested that the Board professionals go over all the documents and give their opinion as to whether the conditions have been satisfied.

Member Napolitan asked if the 4 points brought up by Mr. Hiros are reflected in the minutes? Solicitor Abbott stated that the conditions of the resolution make reference to the Engineer's report. She said that she would review the engineer's report prior to the January meeting. She also suggested asking Terrence Huettl to attend the January meeting of the Board to resolve this issue once and for all.

Mayor Muchowski requested that the Board Clerk supply copies of documents from Whitesell and Mr. Hiros for the January packet.

Motion to direct the professional staff to investigate and outline if the conditions had been met and requesting the Board Clerk to compile the documents into one packet for the Board members by Muchowski, seconded by O'Hara. Motion unanimously approved by all members present.

Chairperson Hamilton-Wood stated that they would return to the Correspondence. Mayor Muchowski stated that Correspondence A was a letter from Whitesell about the same issue. This should be compiled into the packet for the January meeting. The report on Fine Foods and Spirits can be received and filed as additional plans have been received.

Mayor Muchowski stated that a report from Chief Dawson stated that the revised plans for Fine Foods and Spirits appear to be exceeding the allowance of the liquor license.

Motion to incorporate the Whitesell letters into the packet and to receive and file the report on Fine Foods and Spirits by Muchowski, seconded by O'Hara. Motion unanimously approved by all members present.

Correspondence M regarding the Township Ordinance amending Chapter 91 regarding fences on non-residential properties. Motion to receive and file by O'Hara, seconded by Smith. Motion unanimously approved by all members present.

Correspondence N an ordinance of the Township of Florence to adopt an updated and amended Official Map and adopt an updated and amended Zoning Map for the Boards review and recommendation.

Chairperson Hamilton-Wood stated that this ordinance was before the Council on December 7<sup>th</sup> and approved on first reading. It is scheduled for public hearing and adoption on December 21<sup>st</sup>. Solicitor Abbott stated that the Board does not have the authority to stop the adoption of the ordinance. If the Board by resolution advises Council that they disapprove of this ordinance, Council can still adopt this, but they would also have to adopt a resolution setting forth their reasons for adopting it over the Planning Board's objections.

Motion to recommend adoption of Ordinance 2005-30, which is Planning Board Resolution PB-2005-47 by Smith, seconded by Fratinardo.

Upon roll call the Board voted as follows:

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

#### OLD BUSINESS

Chairperson Hamilton-Wood called for application PB#2005-07 for Peoples Savings Bank. Applicant is requesting Preliminary and Final Major Site Plan approval for construction of a parking lot to the rear of the existing bank structure located at Broad & Front Street, Block 58, Lots 3 & 4, located in an NC Neighborhood Commercial District.

Jonas Singer, attorney for the applicant stated that the plans had been revised to show a right hand turn only out of the driveway and incorporated buffering along the property line. He stated that they had sent a letter to the two adjoining neighbors. The neighbor to the side responded that they would prefer to have plantings rather than a fence. The

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neighbor along the rear stated that they would be satisfied with slats in the fence, but the applicant proposed a board on board fence.

Attorney Singer stated that he had sent a letter to NJTransit requesting the relocation of the bus shelter. He said that NJTransit indicated that the placement of the shelter is a municipal matter. Mayor Muchowski said that the Board is not concerned with the location of the shelter; it is the actual bus stop that should be moved.

Mayor Muchowski stated that the County had sent a letter stating that the driveway should exit onto Broad Street. Attorney Singer stated that the County Planning Board had approved the plan with the driveway exiting on Front Street. Attorney Singer stated that they did not have this in writing from the County yet.

Solicitor Abbott stated that she was looking at her notes from the October meeting regarding the Board's concern for cars exiting the driveway adjacent to the bus stop and in her notes it indicates that Attorney Singer would investigate moving the bus stop, not the bus shelter. Attorney Singer stated that there had been discussion about where the stop should be and he didn't think the Board would favor having the bus stop in front of a resident's house. Mayor Muchowski stated that the report from the County Planning Board said that the driveway lane and any parking spaces that might interfere with the vehicles into or out of the site should be at least 25' from the right of way of the County road.

Patrick Ennis, engineer for the applicant, stated that he had met with the County and they said that due to the size of the site there is no other place to put the parking and the applicant should request a variance to put the parking where it is. Mayor Muchowski asked if the County had approved it. Mr. Ennis stated that they did not have County approval yet. The application was still being reviewed. Mayor Muchowski stated that the Board was concerned with the placement of the driveway. There is the possibility of a car coming off the county road into the site with the potential of a car backing out of the spot at the same time. Mr. Ennis said that he had spoken to the County Engineer and because of the distance between the entrance and where the parking lot begins, he doesn't see a problem with this.

Chairperson Hamilton-Wood asked the Mayor where the bus actually stops since he had witnessed the bus stopping on Veteran's Day. Mayor Muchowski said that since the Board had expressed a concern about the location of the actual bus stop, one would have thought that the applicant would have viewed the bus stopping. Mr. Ennis said that this is why they went to a right turn only out of the driveway. Mayor Muchowski asked if Mr. Ennis knew where the bus stopped. Mr. Ennis said that you would assume that the concrete pad is where the bus would stop.

Attorney Singer asked Mayor Muchowski if he was asking which driver stops where? Chairperson Hamilton-Wood said that she thought that the Mayor was asking that if a car

is at the driveway waiting to exit the site and the bus stops can the car see past the bus to make a safe exit of the site.

Engineer Morris stated that it is the applicant's responsibility to define where the bus is going to park and whether someone exiting the parking lot is outside of the site triangle. Mayor Muchowski asked if Mr. Ennis had done any data on the bus stop. Attorney Singer stated that they had not done any data on the actual stopping place of the bus. Mr. Ennis made an assumption that the bus stopped right at the shelter. Mayor Muchowski does not think this is a correct assumption. Attorney said that the driveway entrance was the farthest point on their lot. They thought that by making, as suggested, a right hand turn only exiting the parking lot that would resolve the Boards concern. Attorney Singer asked if they see that the bus stops closer to the driveway, what could they do. The driveway is as far from the bus stop as possible. Chairperson Hamilton-Wood said that the Board should be as fully educated as possible so that if they approve the application and there is an accident the Board can defend their approval.

Chairperson Hamilton-Wood asked Attorney Singer to provide the site triangles as to how they affect the bus stop. Engineer Morris said the applicant should provide data for the relationship of where the bus is actually going to stop in relation to the site triangle. Engineer Morris stated that the applicant is making an assumption that the bus stops at the pad in front of the shelter, but can not prove this.

Member O'Hara stated that on the plan page 2 of 6 it shows a sign and yellow curb – no parking. He said that he would assume that this is to keep people from parking in this area to allow the bus to pull up to the curb. This yellow curb extends past the concrete pad. Attorney Singer stated that you would still be within the site triangle.

Mayor Muchowski said that the applicant could have given solid testimony that it is a safe exit from the site up to a certain point. This would have given the Board verifiable data that could have been documented.

Mayor Muchowski reference the report for Police Chief Dawson as to where and why bus stop placements were made on roadway systems with intersecting roads and driveways. Attorney Singer said that he did have the Chief's letter. He also stated that the County did not see an issue with this. Mayor Muchowski stated that the letter the Board had received from the County indicated that the County would prefer the exit to be on Broad Street. This would make the bus stop a non-issue. Attorney Singer stated that the County had verbally told them that they understand that Broad Street was not a viable exit, and they have agreed to leave the exit where it is on the plan. Mr. Ennis stated that the County standard is that when there is an intersection of a county road and township road the preferable exit is on the township road. The letter that the Board received stated that the plan did not meet this standard. When Mr. Ennis met with the County they understood that because of the restraints of the property it would just be waiver to have the exit on the county road.

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Engineer Morris did a quick calculation and if the bus were at the end of the yellow curb it would clearly be within the site triangle. If the front of the bus were in front of the concrete pad it would be okay. Member O'Hara asked if the yellow curb could be moved back. Mayor Muchowski stated that the County would not do this because then the bus would protrude onto Broad Street.

Solicitor Abbott stated that in order for the Board to approve the site plan the applicant needed to show that there was no public detriment. She stated that in her opinion a traffic study of the bus should have been done. Chairperson Hamilton-Wood stated that she would like to know how long the bus stops for on average.

Mr. Ennis stated that the County wanted to see a yellow curb painted all the way to the entrance of the parking lot.

Mayor Muchowski stated that he thought the Board had made it clear that they were concerned with safety. Attorney Singer stated that he recalled a long discussion on the bus stop. He thought that making a right hand exit only and adding the concrete island would alleviate the problem.

Member Fratinardo stated that he was concerned with the right hand turn only because he thought the distance from Broad Street was too short to allow a safe left hand turn.

Mayor Muchowski stated that the Board wanted to work with the applicant or they would have already denied the application. He stated that the applicant needed to provide basic information. There were several concerns. The buffering concerns have been addressed. This is a low volume parking lot with only 5 total spots, but there is a tight area with 2 of the spots backing up into the right of way and still the problem with the bus stop.

Member Smith asked for the hours of operation. Attorney Singer stated that the hours would be from 9 to 5. There would be no ATM at the site. One bus comes per hour.

Member Smith asked if the plan was to cut the grade for the 2 parking spaces. Mr. Ennis stated that the contours are tied in but it is graded not cut. Engineer Morris stated that there is a 1' cut in certain areas.

Attorney Singer stated that if the remaining issue is the location of where the bus stops. Then they will sit out and see where the bus stops and then report back to the Board. Member Napolitan said that the applicant should contact the Department of Transportation as to where the bus is expected to stop and then where in reality it is stopping.

Member O'Hara stated that there are variances requested and if the applicant can prove that the positives outweigh the negatives than the variances could be granted. He stated that safety is a critical issue with this application. He stated that he would like to see the

response from the County approving the plan. The applicant should provide visuals for where the bus stops. The applicant should document as much as he can regarding the bus so that the Board can make a decision.

Member Smith asked for the dimensions of Front Street be put on the plan because Front Street narrows as it goes up the hill. Chairperson Hamilton-Wood asked where the street parking would begin. Mr. Ennis stated that there would be an additional 75' of no parking. Approximately 4 existing street parking spots will be eliminated.

Member Fratinardo asked what would be the benefit of the 5 spot parking lot, when you are eliminating the 4 street parking spots. Attorney Singer said that you would gain the new façade of the building and the handicap spot.

Attorney Singer stated that the applicant would provide the requested information and asked if this was the only remaining issue. Chairperson Hamilton-Wood said that she could not guarantee that this is the only remaining issue.

Mayor Muchowski asked the applicant to submit the letters from the neighbors regarding the buffering. Attorney Singer submitted exhibit A1 consisting of 2 letters from Attorney Singer to the neighbors regarding buffering and 1 letter responding to Attorney Singer's letters. Mayor Muchowski wanted to clarify that one of the neighbors; Reverend Kinter did not live on the property but used it as a rental unit.

Chairperson Hamilton-Wood stated that any items listed on the reports of the Board's professionals should be addressed. Attorney Singer asked Planner Hintz about the required plantings. Planner Hintz stated that some minor details about the lighting need to be addressed.

Member O'Hara asked that if the application were approved and at a later date the bank wanted to add an ATM would they have to come back before the Board. Mayor Muchowski stated that they would have to come back because this would affect the traffic and the hours of the bank. Attorney Singer disagreed with this. He did not think that site plan review would be required.

Engineer Morris noted that from his November 7, 2005 letter, that the plans must be signed and sealed by a professional engineer. Legal descriptions for the lot consolidation must be submitted. The zoning tax map and key map must be part of the title sheet. It should be noted that the parking stalls are restricted on the right hand side. The curb island detail should be provided. The island area should be handicap accessible. There should be a foundation for the Board on Board fence shown on the plan.

Attorney Singer agreed to extend the time limit for Board action until the end of January.

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Motion of Fratinardo, seconded by Napolitan to continue application PB#2005-07 until January 16, 2006.

Upon roll call the Board voted as follows:

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

The Board returned to Resolution 2005-46. Attorney Beadle stated that she had been unable to reach her client or Attorney Penberthy. She said that in light of the record of the meeting that had been brought to her attention from the minutes of the meeting and the recollection of the Board she did not want her comments to impede the ability of the Board to adopt the resolution.

Motion of Fratinardo, seconded by Smith to approve resolution PB-2005-46 as amended.

Mayor Muchowski asked if there were intentions to litigate the point regarding COAH. Attorney Beadle stated that she had not been able to reach Mr. Penberthy and could not state that there would be no litigation. Solicitor Abbott stated that any time a resolution is adopted the applicant has the right to come back to the Board to request that the condition be modified or removed. Mayor Muchowski asked if Attorney Beadle was on the record indicating that the resolution accurately depicts the approvals that were in place? Solicitor Abbott answered that Attorney Beadle was saying that based on her review of the minutes in which the applicant agreed to those conditions and the consensus of the Board that the resolution appears to be in line with the record.

Upon roll call the Board voted as follows:

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

Chairperson Hamilton-Wood called for application PB#2005-09 for Harold Boston. Applicant is requesting Preliminary Major Subdivision approval to develop Block 147.01, Lot 3.03 located on Railroad Avenue into 5 building lots and 1 basin lot.

Chairperson Hamilton-Wood asked how the proposed Township ordinance which was addressed during the Correspondence portion of the meeting affected the hearing of this application. Solicitor Abbott stated that as the applicant is well aware an ordinance had been introduced on first read and is scheduled to be adopted on Wednesday December 21, 2005 that will change the zoning of the subject property from RA to SM.

Attorney Singer stated that it was presumption to assume that the ordinance would be adopted by Council. He felt that the RA zone still existed and would like to have the application heard by the Board.

Solicitor Abbott replied that the application had been deemed incomplete at the November meeting because all of the items on the checklist had not been provided. The missing item has been provided and it is appropriate for the Board to deem the application complete.

Motion of Muchowski, seconded by O'Hara to deem application PB#2005-09 complete. Motion unanimously approved by all members present.

Solicitor Abbott stated that because this was an application for subdivision of fewer than 10 lots the Board has 45 days from tonight to render a decision, this would extend until February 2, 2006. The Board does not need to make a decision at this time.

Solicitor Abbott responded to Attorney Singer saying that there was a pending ordinance affecting zoning of the property. Tonight the Board acted to recommend to Council that the ordinance be adopted and put into affect. Council is entitled to do this. The ordinance can be changed and the zone can be changed when there is a pending application. She referred to the case of Willoughby vs. Planning Board of Deptford Township. The pertinent points of this case are that when a governing body proposes to amend the zoning ordinance the Planning Board should not rush to grant development approvals under the existing zoning before the amendments to the ordinance should take affect. If it can the Planning Board should defer hearings on the application for a brief period to determine whether the proposed ordinance rezoning the property would be adopted. The Planning Board should not attempt to usurp the Township Councils role in determining the Municipality's Land Plan by going ahead and approving or deciding an application while there is an ordinance pending that changes the zone. Solicitor Abbott recommended that the Board continue the application until the January meeting pending Council's action regarding the ordinance.

Attorney Singer stated that he had appeared before the Board at the November meeting and because there was a species of trees not labeled on the plans the application was deemed incomplete. He said that he had been told by the Board that if the application was deemed complete at the next meeting it would be heard on the merits. He also reference a letter from the Board Clerk dated October 26, 2005 indicating that at the time the application was deemed complete it would be heard on the merits. He said that there was no doubt in his mind that at the time the Board deemed the application incomplete at the last meeting, members of the Board knew of the proposed amendment to the zoning ordinance because it affects only this parcel. He said that he hasn't seen anything in support of any amendments to the Master Plan or any studies prepared by the Planner supporting an amendment to the Zoning Ordinance. He requested that the Board allowed the application to be heard on its merits and treat this applicant in the same manner as it

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treats every other applicant and that they not arbitrarily decide that because an ordinance is proposed that only specifically relates to this parcel that you allow the governing body to consider that ordinance prior to hearing the applicant this evening. He said that they received the reports from the Board's professional staff and are prepared to agree to any and all conditions contained in those reports. This application contains no variances and as of right they are entitled to a Major Subdivision approval. Otherwise they believe that this Board is acting arbitrarily and capriciously and is singling out this application. As early as a year ago the Board had the opportunity to make changes to this zone and did not take it, but because an application has been filed the Board has "fast tracked" an ordinance to Township Council affecting the property rights of the applicant.

Chairperson Hamilton-Wood asked Attorney Singer how the argument he had just made related to the Willoughby case. Attorney Singer said that there was nothing in the record before Township Council that deals with any amendments to the Master Plan. Chairperson Hamilton-Wood again asked how that related to the fact that the Board was not supposed to rush to a decision to beat out the Township Council adopting the ordinance. Attorney Singer answered because the amendment only affects this piece of property and it was intended to only affect this application. He said that this is why the application was deemed incomplete last month. Chairperson Hamilton-Wood stated that this Board did not introduce the ordinance Council introduced it. Attorney Singer stated that if the Board refuses to hear the application at this time, the applicant would take this matter to superior court.

Attorney Singer stated that the zone has residences on both sides of it and they are only filling in. He asked to be heard under the existing zoning.

Solicitor Abbott stated that the Municipal Land Use Law gives this Board 45 days to act on this application from the day it is deemed complete. There is nothing that requires a Board to act any sooner than those 45 days so it is up to the Board. The Board has the right to continue the application until the January 16, 2006 meeting. No additional notice would be required.

Motion of Muchowski, seconded by O'Hara to continue the application until January 16, 2006.

Member O'Hara stated that in light of the case history that Solicitor Abbott reviewed with the Board and the fact that the Board is not required to act on this for 45 days, it is in the Board's best interest to postpone the application.

Attorney Singer asked to present for the record the letter from the Board Clerk from October 25, 2005 stating that the application would be heard on its merits after being deemed complete. Mayor Muchowski asked Mr. Singer to read from the letter. Mr. Singer quoted from the letter:

“ If the Board grants the waivers at that time the application may be deemed complete and may proceed to a hearing on your request for Preliminary Major Subdivision approval.”

Solicitor Abbott stated that the way the letter was worded “ the application may go on to a hearing” this is to advise applicants to be prepared for a hearing. This is at the discretion at a Board, the application may or may not go on to a hearing.

Upon roll call the Board voted as follows:

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

Attorney Singer asked if at last months meeting the Board knew that the ordinance was going to be proposed at Township Council. Chairperson Hamilton-Wood stated that the Board had no discussion regarding this ordinance before last months meeting.

Attorney Singer asked if he could poll the Board. Chairperson Hamilton-Wood stated that she did not think that it was appropriate and she was looking to Counsel. Solicitor Abbott stated that she did not think it was relevant. Attorney Singer asked if Solicitor Abbott was directing the Board to not respond. Chairperson Hamilton-Wood stated that the Board had never been polled before so it was unusual. Attorney Singer then asked Mayor Muchowski if he knew prior to the last months meeting that the ordinance was going to be introduced at Council. Mayor Muchowski stated that he deferred to the Solicitor on this matter.

Attorney Singer requested a transcript of the November and December 2005 Planning Board meetings.

Chairperson Hamilton-Wood called for application PB#2005-12 for Orleans Homebuilders/Bustleton Estates North. Applicant is requesting Final Major Subdivision approval to allow construction of 15 single family homes located on Bustleton Road, Block 160.01, Lot 5.01.

Solicitor Abbott stated that the application is complete and there were no waivers requested.

Lauren Beadle, attorney for the applicant, stated that she had Michael Citterone, professional engineer from Everland Shourd and Associates and Rod Ritchie, approvals manager from Orleans Homebuilders. Both were sworn in by Solicitor Abbott.

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Mr. Citterone stated that the project site was approximately 53 acres. They are proposing 15 three acre lots as well as 3 stormwater basins. There are 2 cul-de-sacs planned. The westerly entrance lines up with the proposed Bustleton Estates South subdivision.

Preliminary approval was received in 1999. The applicant met with the Burlington Township engineer last week to address some drainage concerns. Engineer Morris has a copy of the letter from Burlington Township indicating that Mr. Citterone had met with them and discussed how to resolve the drainage issues. This letter was marked as exhibit A1.

Attorney Beadle asked to go through the review letters. Mayor Muchowski stated that the prior approval for this site had Preliminary approval without sidewalks, curbs, and swales. He stated that most of the current Board members were not on the Board when this was approved and he asked for a brief description of the plan.

Mr. Citterone stated that the proposal was for a 28' wide cartway with roadside swales that will be drained with storm pipes and inlets that will run into the proposed basin. There is no curb or sidewalk proposed. Mayor Muchowski said that since they are marketing and tying these sites together would they want to match this to the Bustleton Estates South development?

Mr. Ritchie stated that they would want consistency between the 2 sites. The way this was approved before was with roadside swales. If the Board chooses to modify that, the applicant doesn't have an objection to that. Mayor Muchowski stated that Engineer Morris on his comment letter on the Preliminary approval for Bustleton Estates South had noted letter that this does not include curbs, sidewalks and has roadside swales. Mayor Muchowski commented that this was something new to the Board. Orleans had said at the Bustleton Estates South hearing that if the Board required curbing, they would prefer to use belgian block. Mr. Ritchie stated that on both North and South sides of the developments there would be sidewalks on the county road.

Mr. Ritchie said that whatever is decided on this application should be duplicated for the South development. He said that they would work with Engineer Morris to determine whether there would be the roadside swales or curbs and gutters. Mr. Ritchie stated that he was concerned with deviating from the roadside swales because of the DEP new rules. If the DEP wants the swales on the South then Orleans would want them on the North side.

Mayor Muchowski asked about having swales on the Homeowners property rather than in the right of way. Planner Hintz stated that you could move the swales back from the right of way but put them in a Homeowners Association easement. Engineer Morris stated that it was his understanding that if you had gotten Preliminary approval before the regulations from February 2004 you were basically exempt. Chairperson Hamilton-

Wood stated that the Board wants both sides of the development to match. She stated that this should be conditioned on working with the Professionals.

Mr. Ritchie said that the DEP will not regulate the North side, but they will regulate the South side. If the DEP says that they must have swales on the South side, then Orleans would want to have it on the North side too.

Member Smith asked what the benefit of curbs and gutters as opposed to swales. Engineer Morris stated that you actually have more runoff with curbs and gutters. Swales will reduce the amount of water going into detention ponds.

Member Smith asked about the possibility of changing the alignment of the road on the South side to give a couple of the lots more ground. Chairperson Hamilton-Wood stated that it was the curvature of the road not where the road aligned. Mr. Citterone stated that the 2 roads have to match up. He said that he had revised the plans for the South side to eliminate all of the variances on the lots except for the COAH unit, which still maintains the road alignment.

Engineer Morris reviewed his report dated December 14, 2005. Item 12 Mayor Muchowski asked what the bus shelters were for. These are for school buses. Mayor Muchowski suggested putting a trash receptacle near the bus stop.

Item 14 Mr. Citterone stated that they had met with Burlington Township in regards to the emergency spillway and will work with them to relocate the spillway on both the north and the south sides.

Mr. Ritchie stated that they would comply with all items in Engineer Morris' report.

Planner Hintz reviewed his report on the application. Item 4.2 there is one lot that irregularly shaped but did not require a variance at the time of Preliminary approval. Item 4.3 requires constraint free circles. Mr. Citterone stated that they would be shown on the plan. Mr. Ritchie agreed to meet all the items of the Planner's report and will work with Planner Hintz to work out the landscape and lighting details.

Mayor Muchowski asked if there were any on site tile drains, drainage fields or ditches that construction is going to effect. Mr. Citterone stated that there were numerous test pits and he doesn't believe they hit any tile drains. The site is actively farmed. Mayor Muchowski stated that typically the farmers generally know where irrigation ditches or tile drains are located. Mr. Ritchie stated that he would speak with the farmer to see where the drains are located.

The Board discussed the width of the cartway on the South development. According to the minutes the cartway on the South is 30'. Mr. Ritchie asked if the Board wanted parking on one side of the street. Solicitor Abbott stated that a condition of Preliminary

was that on street parking would be prohibited. Mr. Ritchie asked if the Board wanted a 30' cartway and parking on one side. The Board would like to see parking on one side. Mr. Ritchie said he would have to see if this creates any design problems. Engineer Morris stated that to be consistent with the South you would need to have 30' cartway and belgian block curbs. Mr. Ritchie said that they would proceed on the basis that it would be 30' wide cart widths, parking on one side, curb and gutter and if there are obstacles with the DEP they will come back and open up the discussion again. Chairperson Hamilton-Wood said there should also be sidewalk on one side.

The Board moved on to the COAH obligation. Solicitor Abbott stated that when the Preliminary approval was extended by this Board back in January 2005, Attorney Penberthy was present as well as Mr. Karmatz. The condition of the resolution extending the Preliminary approval was compliance with all COAH requirements set forth in the Township ordinances 2005-01 and 2005-02. Mr. Karmatz agreed to meet the COAH regulations. Solicitor Abbott read from the minutes of the January 2005 minutes.

Attorney Beadle stated that she understood the township's adoption of the 2 ordinances to enable the Township to have all 3 ways available to satisfy COAH. The issue is that the 3<sup>rd</sup> regulation says that you have to pick 1 of the 3. You either have to build them on site, give the \$35,000 in lieu of that or give the developers fee. She said that she understands the reading from the record based on what was agreed at that time. She doesn't know if at that time it was known that you could only force one of the 3. Mayor Muchowski stated that the Board did not enforce. They requested at the time of the extension and the applicant offered to do this. Attorney Beadle said that she thought that the Board would have trouble with all the applications if they were going to think you could take both fees under the COAH rules. Member Fratinardo stated that the Board can request and the applicant can agree or not. Mayor Muchowski stated that the Board had the option that night to deny the extension, of free will the applicant offered to do both. Unfortunately the people who made those representations were not in attendance this evening causing this issue. Mr. Ritchie stated that he was in attendance at that meeting and he remembered that they agreed to comply with the new ordinances that had come out and comply with the COAH regulations, but he personally doesn't remember Mike Karmatz agreeing to both fees.

Member Fratinardo stated that his preference is to have the COAH done on site because he doesn't want to concentrate lower income in one section of town. This is how slums are developed in townships. Mr. Ritchie stated that if he were coming in with a new plan that did not have Preliminary approval he would have complied with that request. Mayor Muchowski stated that the key is the fact that they would not have been granted the extension without agreeing to pay both the contribution and the developer's fee. Mr. Ritchie stated that he was willing to agree to one of the COAH options the Board had to choose which one. Mayor Muchowski said that he thought the Board needed to hear from Mr. Penberthy and Mr. Karmatz. Mr. Ritchie stated that he was confused and asked why. Chairperson Hamilton-Wood stated that the agreement that was done as a condition

of the extension was both. It is the Boards understanding that this is what was offered by Mr. Penberthy.

Mr. Ritchie asked if they were to agree to make the COAH units on the south as rental units to get the bonus would this be acceptable. Mayor Muchowski stated that this was not how it had been presented at the public hearing. They would have to re-advertise and this is not what the Board was looking for.

Mayor Muchowski stated that at the time that the extension was granted he specifically asked for the \$35,000 per unit plus the developers fee. In order to get the extension of approval they offered to pay both these. He stated that had the approval expired a whole new application subject to the new rules and regulations would have to be filed.

Mayor Muchowski stated that he thought that we should continue the application to be able to review the tapes from the meeting.

Mr. Ritchie said that he thought that the Board might be interested in making the COAH units rentals in order to get the bonus, if the Board is not interested in this, he will agree to pay both of the fees.

Planner Hintz stated if they were to convert the COAH units in the south side they would have to change the plan that was submitted to the State.

Solicitor Abbott stated that they still needed a certification from the present owner agreeing to the application. Attorney Beadle stated that she thought one was filed at the time of the extension back in January 2005, but she would check on it.

Solicitor Abbott stated that the conditions were compliance with the reports of the Board Planner and the Board Engineer, 30' cartway with parking on one side Belgian block curbing and gutters, if swales are necessary will be designed in conjunction with the Board Engineer, the development signs for the north and south will be the same, the bus shelter will be located on an easement to the Homeowners Association, sidewalks will provided on one side of the street. The applicant has agreed to pay \$35,000 per COAH unit and 1% of the equalized assessed value of the market rate. Also compliance with all the conditions of the Preliminary approval.

Motion by O'Hara, seconded by Fratinardo to approve PB#2005-12.

Upon roll call the Board voted as follows:

YEAS: Fratinardo, Muchowski, Napolitan, O'Hara, Smith, DeAngelis  
Hamilton-Wood

NOES: None

ABSENT: Stockhaus

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Motion to adjourn by Smith, seconded by DeAngelis. Motion unanimously approved by all members present.

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John T. Smith, Secretary

JTS/ne