

**FRANKFORD TOWNSHIP LAND USE BOARD**  
**MARCH 24 , 2004 – 7:30 P.M.**  
**MINUTES OF THE REGULAR MEETING**

**CALL TO ORDER:**

The meeting was called to order by the board Chairman, Jay Romania, by announcing that notice appeared in the New Jersey Herald and the New Jersey Sunday Herald in accordance with the requirements of The Open Public Meetings Act.

Flag Salute

**ATTENDANCE:**

Those Present were: Mr. Ayers, Mr. Hahn, Mr. Risdon (arrived at 7:50 p.m.), Mr. Zappile, Mr. Hatler, Mrs. Kristensen, Mr. Martin, Mr. Nadolny, Mr. Romania, and Mr. Gstattenbauer. Also present was Mr. Clark and Mr. Pellow.

Those absent: Mrs. Caldwell (excused).

**MINUTES:**

The Minutes of the February 18, 2004 Regular Meeting were reviewed. Mrs. Kristensen indicated that on page " 6" of the minutes " Mr. Kristensen" should read " Mrs. Kristensen; on page " 7" of the minutes " Dawn File" should read " Dawn Pfeil" ; and after the applicant " Tricer Management" Mrs. Kristensen indicated that she thanked the applicant for putting over 200 acres of land into Farmland Preservation. She feels that this should be in the minutes to show the towns appreciation.

A Motion was made by Mr. Martin and seconded by Mr. Nadolny to approve the minutes of the February 18, 2004 Regular Meeting with the changes noted above. All were in favor, except Mrs. Kristensen, who abstained from application LUB 04-05 portion of the minutes. The Motion was carried.

The Minutes of the February 25, 2004 Regular Meeting were reviewed. A Motion was made by Mr. Martin and seconded by Mr. Nadolny to approve the minutes of the February 25, 2004 Regular Meeting. All were in favor, except Mrs. Kristensen who abstained from application LUB 03-08 and LUB 04-08 portion of the minutes. The Motion was carried.

**PUBLIC PARTICIPATION:**

A Motion was made by Mr. Hahn and seconded by Mrs. Kristensen to open this meeting to the public. All were in favor. The Motion was carried.

George Schoch questioned Mr. Clark with regard to the wetland restrictive covenant in the proposed Deeds submitted on behalf of his Minor Subdivision Application approved last month. Mr. Schoch indicated that there are no wetlands on this property. Mr. Clark indicated but there is a buffer from the neighboring property.

Helen Kipsey stated that she owns property on Dickerson Road which she subdivided in 1990. There were two front lots and one was a flag lot with a 50 foot right of way into the property. She sold the back lot to someone and part of the Resolution was he had to pave the first 600 feet to perfect the Resolution. She stated that when she went up in January, 2004, he put up fence posts blocking her 50 foot right of way to enter her property. Mr. Pellow indicated in a letter to Mrs. Kipsey that the owner of the rear lot can not put a gate up to block the 50 foot right of way. Mr. Clark indicated that this is not a matter the Land Use Board can handle. This is a private matter and Mrs. Kipsey would have to file a complaint with the Municipal Court.

A Motion was made by Mr. Martin and seconded by Mr. Nadolny to close this matter to the public. All were in favor. The Motion was carried.

#### **ZONING OFFICER' S REPORT:**

The Zoning Officer' s Report dated March 17, 2004 was reviewed. No formal action was taken.

Mr. Patterson added to his report: Yeters Diner – The owner found out that there is a problem with the lower driveway. As you pull in there is a big bank. This winter with plowing, there is a sight distance problem. The owner would like to cut that bank down. Mr. Pellow agreed to review this matter.

Mr. Patterson also added to his report: Risdon Campground – Mr. Risdon has a swimming pool at the Campground which has all the approvals and inspections from the State. He would like to use this swimming pool for the campers. The pool does not affect drainage, parking or lighting. He questioned the board if this could be done as a Minor Site Plan to be reviewed by Mr. Patterson, Mr. Fette and Mr. Pellow and the results will be sent back to the Land Use Board. The board agreed.

Mr. Edward Risdon, Jr. joined the meeting at 7:50 p.m.

#### **Sussex County Farm and Horse Show – 2004 List of Annual Events:**

Mr. Hahn stepped down.

Mr. Worts presented to the board the events for the Sussex County Farm and Horse Show for 2004. He indicated that there is nothing new this year as compared to last year.

Mr. Patterson stated that the Newton Rotary Club, a non-profit organization, wants to

put an addition on one of their booths. He questioned the board how to handle this. The board indicated that it would be a Minor Site Plan.

**CONCEPT APPLICATION:**

**Sussex Commons Lifestyle Outlets – LUB 03-25 and Lorterdan Properties – LUB 03-02:**

Mr. Clark indicated to the public that a Concept Application is a plan where the applicant wants some input from the board. It is not an application. It is like a pre-application. Anything the board says is not binding on the board. Anything the applicant says is not binding on the applicant in the sense of an application. This is not a formal application where there is notice and a public hearing where the public participates as it does in other meetings. This hearing was done at the request of the board in that the Office of State Planning sent a letter to the board as to certain aspects of the Town Center. Mr. Clark indicated he was directed to send this letter to the applicants to respond to certain items in the letter. This board has the local jurisdiction and decides it. There is the larger issue of town center designation which is needed in order to implement either of these plans.

Appearing on behalf of Sussex Commons, was their attorney, Kevin Kelly. Also appearing were Anthony F. Santarelli and Howard Buerkle.

Mr. Kelly handed out to the board copies of letters from Sussex Commons to The State of New Jersey, Department of Community Affairs dated February 4, 2004, February 12, 2004 and March 15, 2004. He also handed out Suggestions and Opportunities Offered by the office of Smart Growth.

Mr. Buerkle submitted to the board a revised site plan as requested by the State.

(A) The DCA suggests a community shopping area be included in the center for services and purchases. Sussex plan now includes a convenience area to be leased to service businesses such as a video store, pharmacy, post office, book store, etc. The center is easily shopped and is nearby the residential center.

(B) The DCA also suggested that the entire mall be moved adjacent to Route 206 and also to Route 565 with no perimeter road whatsoever. Mr. Buerkle indicated that they were successful in persuading the State for safety and other issues, it would be best to have parking on both sides and they were able to accommodate the State by moving the project 70 feet closer to the intersection.

(C) The DCA suggested that they move the north entrance of the project from 206 about 150 feet farther north, so the entrance would be straight. Sussex Commons does not control this property and immediately contacted its neighbor to initiate a discussion. The discussions were not fruitful to date, a situation made known to the DCA. They have told the State that this would not be possible.

(D) The DCA also suggested that all components of the Town Center be connected. Sussex Commons has incorporated in the current plan both walkways and roadways connecting the ball park, adult community and other uses with the commercial center.

(E) The DCA suggested that Sussex Commons put additional landscaping at the rear portion of the project on Championship Drive to screen the bus stop area and additional parking, which they have done.

(F) The DEP and the DCA were concerned about stormwater collection and detention areas in the front parking areas. They (the State) suggested using small areas for field collection and detention. There will be underground retention tubes as suggested by the DEP. There will be no more detention pond.

(G) The DEP suggests that Sussex consider a parking lot capacity of 4/1000 rather than the 5/1000 currently required by the Township. Sussex was successful in requesting DCA consider the entire Town Center commercial and recreation area as one site using shared facilities. Under this plan Sussex has acquired five and one quarter acres of property from the ball field owner and Sussex is discussing an additional purchase of three more acres of parking from the ball field. The reduction was accomplished by providing an offer by Sussex to share all of its parking for the use of the ball park. The net effect will be the reduction of almost 800 parking spaces at the field and Sussex will continue to meet the Township requirements.

(H) The DCA suggested aligning the 565 entrance with the rear entrance to the ball field. Sussex presented the suggestion to the traffic engineer who cautioned that doing so would create a pedestrian hazard. Sussex Commons was able to relocate some parking to accomplish the DCA objective.

(I) The DCA suggested the second parking lot entrance at the rear north be modified.

(J) The DCA suggested the theatre be placed in the ball field parking lot. Sussex gave consideration to the suggestion, but on the advice of the traffic engineers considered the pedestrian hazard to the site and traffic on Championship Drive. Sussex Commons were not able to accommodate the suggestion. The traffic engineer suggested that a better use of the land would be to put the motel site in the parking lot of the ball park.

Mr. Buerkle further noted that the DCA had further suggestions that would have to be considered by the Township and Sussex County that they could not act upon.

(A) The DCA suggested that the Township consider reducing the building setback to fifty feet. Sussex Commons' Plan is 100 feet setback, which is something that the applicant could not change.

(B) The DCA also suggested that no berm be provided as required by the Township. Their plan is to have a berm at the request of the township.

(C) The DCA also suggested that the Township consider 9 x 18 parking spaces to cut down on the impervious surface. The plan before the board makes provisions for both 10 x 20 spaces and 9 x 18 spaces. They need direction from the Land Use Board.

(D) The DCA also suggested that the town center must include on site housing. Sussex Commons has been successful in suggesting that housing is better planned on an adjacent parcel. Sussex Commons suggests that an apartment complex of mostly one bedroom units and a small number of two bedroom condominiums may be acceptable to DCA. Sussex Commons requests additional direction from this board as to the amount of housing that will be required.

Mr. Martin questioned how many full time employees there will be for the mall. Mr. Buerkle indicated that there will be between 350 and 400 which include full time and part time equivalents which are strictly retail components.

Mrs. Kristensen questioned Mr. Buerkle as to the actual size of the mall. Mr. Buerkle indicated that the actual size of the mall is 325,000 square feet without the professional area, the office area on the second floor or the restaurants.

Mr. Ayers questions how many parking spaces are there in this development. Mr. Buerkle indicated that the total retail and restaurant parking provided is 2319 spaces; the theatre is 300; the hotel is 140 parking spaces. This would leave 1000 parking spaces in the ballpark. The ballpark is giving the mall 800 spaces. This does not include any residential parking. Mr. Buerkle further stated that the ball park owner was not willing to have a lifetime easement, which is something they would need for shared parking. What they have done is accumulated land from him to force the ballpark parking into the mall as opposed to forcing the mall customers into the ballpark.

Colleen Cunningham of Lucas & Gaus appeared before the board on behalf of Lorterdan Properties. Also appearing on behalf of Lorterdan Properties was Robert Jackson who will be discussing some of the changes that Lorterdan has made with regard to the plans for the age restricted housing and the golf course project. Their changes are somewhat minor. There were some changes with regard to road alignment, the aesthetics have changed, duplexes, some quads This is all from recommendations of the State pursuant to some of the same meetings that Sussex Commons have been at.

Mr. Jackson presented to the board some drawings of some quad – four home per building model. He indicated that the development has 270 Units. The golf course element has been brought down considerably. They went from an 18 hole course surrounding the community, to a 2 hole course which will be a recreational amenity

for the people who live there. Also, they originally had all triple buildings. Now they have changed some to quads – four homes per building and they also have duplexes. There are 62 four unit homes and 31 duplexes. He feels this is an improvement because it gives Lorterdan an opportunity to offer some homes that are more moderately priced. Mr. Jackson indicated that they are also going to rehab the silos and the barn to provide some recreational/social facilities in there. There will be tennis courts and a swimming pool.

Mr. Pellow indicated that some members of the Land Use Board met at his offices to discuss the town center. Mr. Pellow presented to the board a drawing of the entire town center which they are proposing. Mr. Pellow indicated that they moved the mall slightly to the 206 and 565 areas. They have a green area in the front. When people would come to the intersection, they would look at the centerpiece of the mall being all green.

This area is approximately 70 to 80 feet wide. There still is the same number of parking spaces, however, the sub committee has moved the parking around. Mr. Pellow noted that one of the suggestions by the sub committee was a parking garage in the area around where the hotel is proposed.

Mr. Pellow also noted that the sub committee discussed the residential area. They would like it to be like the Ordinance states, traditional colonial, not the southwestern design.

Mr. Pellow noted that there are large green areas along the road where they could put the water quality swails for the stormwater regulations.

Mr. Martin indicated that they were also thinking about doing away with the berm requirement and also a 50 foot set back.

Mr. Romania indicated that since there are several applications on the agenda this evening, there will be no public participation. However, the applicants, Sussex Commons and Lorterdan Properties, will be staying to take any questions from the public in the lobby of the municipal building.

#### **NEW APPLICATIONS:**

#### **Frank and Patricia Sullivan – LUB 04-10 – Block 270, Lots 12, 12.01 and 12.02 – Minor Subdivision and Planning Variance:**

Appearing on behalf of the applicant was their attorney, Lyn P. Aaroe; John Miller, the applicant's engineer; and the applicants, Frank and Patricia Sullivan.

Mr. Aaroe indicated that this is an application for a Minor Subdivision, the approval of which would result into two new building lots and three existing, reconfigured remaining lots. There are three lots there presently. The homestead lot and two previously subdivided lots, 12.01 and 12.02. Lots 12.01 and 12.02 are proposed to be

re-subdivided into one new lot and a remainder from each. This is a total of two new lots and two remainders, which is a total of four lots, with the homestead lot which makes five lots. The property fronts on the westerly side of Blackford Road which has some public road attributes, but apparently has not been officially acknowledged or accepted by Ordinance as a public street. He understands that the municipality exercises maintenance responsibilities with respect to this road.

Mr. Pellow reviewed his report for completeness. Mr. Pellow indicated that the original report was prepared February 27, 2004 and revised on March 17, 2004. He indicated that the applicant's have addressed all the completeness items from the first report. There are two waivers that the applicant is requesting as to completeness:

“ ITEM 16” Plan clearly and legibly drawn or reproduced maps at a scale not smaller than 1 inch equals 50 feet. The plan has been drawn to a scale of 1” = 100’ . Mr. Pellow indicated this is acceptable.

“ ITEM 75” Building floor plan, elevation views and first floor elevation with overall building height. Mr. Aaroe's memo dated March 11, 2004 has a requested a waiver. Mr. Pellow indicated this is acceptable since the applicant is not proposing to build at this time.

‘ ITEM 79’ A description of any alternatives that were considered. Mr. Pellow indicated that Mr. Aaroe submitted a memo dated March 11, 2004 which addressed this issue. Mr. Aaroe indicated that his memo stated that in this particular case because this is a Section 36 Planning Variance, the only alternative was not to submit a subdivision application. A Subdivision on this road requires a planning variance. There is no alternative.

“ ITEM 80” A statement or legal brief which clarifies why the variance should be granted. Mr. Clark indicated that Mr. Aaroe's memo of March 11, 2004 satisfies this condition.

A Motion was made by Mr. Martin and seconded by Mr. Hahn to deem this application complete. All were in favor. The Motion was carried.

John Miller, the engineer, Frank and Patricia Sullivan were sworn in by the board attorney.

Mr. Miller gave his qualifications to the board. The board accepted Mr. Miller as a qualified witness.

Mr. Miller indicated that the property in question is Block 270, Lots, 12, 12.01 and 12.02. The property is located on the westerly side of Blackford Road. Currently between the existing lot 12, 12.01 and 12.02 has a total area of 29.26 acres. What is being proposed is to re-subdivide two existing lots so they will have areas of 5 acres in order to accomplish

this, there is a lot line adjustment on Lot 12. The subdivision is based on trying to get a minimum lot area of 5 acres for each of the new subdivided lots.

Mr. Romania questioned Mr. Miller why this is a minor subdivision. Mr. Aaroe indicated that he addressed this issue in his memo of March 11, 2004. Aside from the house lot, which is being altered slightly with respect to rotation of the common boundary line between that and Lot 12.02, there are two existing tax lots. Each existing tax lot is a candidate in and of itself for minor subdivision treatment from which there will be one new lot and remainder. This is why it is a minor, because there are two existing tax lots.

Mr. Clark indicated that it is not clear that they meet the subdivision of a minor. They are supposed to front on existing roads that don't cause additional drainage. Mr. Clark questioned Mr. Aaroe if he gave notice for this application. Mr. Aaroe indicated that he gave notice. He stated that his notice fully described what the applicant was doing and the specific reference to the Section 36 Variance.

Mr. Miller continued that in order to accomplish five (5) acres each for these lots and 200 feet of frontage on the lots. A small portion of Lot 12 was sliced off. Now they end up with three lots each having 5 acres and conforming in all fashions with no variances with the exception of the planning variance. The soil logs were performed on each lot and they have acceptable soils. They are to provide in the drawings that there is a minimum of 20,000 square feet of unconstrained land. On the proposed lots, they all greatly exceed that. On proposed lot 12.02 there are 75,000; proposed 12.01, there is approximately 75,000; Lot 12.03 has 39,000 and Lot 12.04 has 38,000 of unconstrained land. Mr. Pellow questioned Mr. Miller if the above mentioned unconstrained areas were within the setbacks. Mr. Miller indicated that they are not within the setbacks. Mr. Pellow indicated that the township Ordinances state the unconstrained lands have to be within the setbacks. Mr. Miller indicated that they will revise this.

Mr. Miller continued that these lots slope up from Blackford Road and there is the access issue. When the original subdivision was approved, there is an easement to get to the new lot. The issue is how to get to the new proposed lots on this subdivision. What the applicant is proposing is a joint access driveway that will be on Lot 12.03. This driveway fronts on existing right of way of Blackford Road, which is 16 foot in that area. It does not cross any other properties. He indicated that there is a portion of Blackford Road where it wanders outside of the right of way. The driveway can be put in in accordance to the ordinance. They have provided profiles and cross sections showing how this would be done. They have also verified site distance both for the proposed and the existing driveway. They both are over the minimum requirements. This driveway is proposed to service 3 lots, 12.02, 12.03 and 12.04.

Mr. Aaroe stated the intersection of the proposed driveway with the right of way of

Blackford Road, this is the portion where the cart way, the paved traveled way, starts to diverge from out of the right of way. Before this occurs, this is the common driveway intersection area. Mr. Miller agreed to this. Mr. Aaroe continued that the proposed common driveway access will intersect clearly the contiguous existing right of way for Blackford Road. Then it will physically intersect the contiguous cart way of Blackford Road which is partially within and partially without the right of way. This has been confirmed by Alan Lamoureux, Mr. Miller's Surveyor, based on Deed review and field work. It is further the case that each of these four lots is contiguous and fronts the dedicated right-of-way of Blackford Road and there are no intervening ownership properties between the right-of-way of Blackford and these proposed lots. Mr. Miller agreed.

Mr. Aaroe stated as of February 2, 2004, the Stormwater Management rules became effective and he perceives this would be a major project by definition and not an exempt or grandfathered project. He questioned Mr. Miller if there was a disturbance proposed in this project in excess of one acre and/or impervious in excess of ¼ acre ultimate build out. Mr. Miller indicated that this driveway will be in excess of the 10,000 square feet of impervious. It will be necessary to meet the new guidelines and they will have to meet the stormwater requirements of the February 2, 2004 new rules. Mr. Miller indicated that Mr. Pellow, as the township engineer, would be the review agent with respect to stormwater regulations under RSIS. Mr. Miller indicated that there is no need to get NJDEP Land Use permits of any type. The detailed review of this would be when the building permits are issued so they have the specifics of actually what is being built, the size of the houses, where the driveway ultimately goes to connect to these houses. They have shown how they get access onto the lots. They did not go up to each individual house. At this point, they do not know exactly where those homes would be. These plans have been prepared to show feasibility of constructing a conforming driveway. Mr. Aaroe stated that if the first person to apply for a building permit where the last lot to be serviced by the driveway, that person would have to build the entire driveway and anything in between. Language to this effect should be in the Resolution, they would propose it would be protective of the township's interest. Also in the subdivision perfection deed, an identification that no building permits can be issued unless and until individual parcel grading plans or a unified plan, whichever the board wishes, are submitted with site specific information to satisfy and demonstrate satisfaction of all the attending considerations.

Mr. Miller stated that the storm pits have a depth of 8 feet and have dimensions of 20 feet long and 10 feet. It is designed that the road is pitched into the slope and goes into a swail and be collected in a stone pit. The same thing happens on the lower portion of the driveway so they collect the run off and control it so that post construction there will be no impact off site.

Mr. Miller addressed the issue as to where the proposed houses will be built on these lots and how the locations will affect views from the lakefront properties. He indicated that they will be built where the lots level off.

Mr. Aaroe' s addressed the issue of land disturbance from putting in the driveway. He stated that the applicant' s would accept a condition to not disturb any trees or vegetation other than to construct the driveway or any tree that is dead and threatening.

Mr. Pellow continued reviewing his report:

Item " 4" : This application was before the Land Use Board as a concept either in November or December, and the Board has to determine whether this application a major or a minor subdivision. Mr. Clark indicated that this has not yet been determined.

Item " 5" : Presently, there are three tax lots and after subdivision, there will be five tax lots with two new lots being created and two lot lines being adjusted. The Applicant could come before the Board and adjust the two lot lines, which may or may not count as a minor subdivision; then, the readjusted lots could be subdivided into lots each, which would a minor subdivision. Mr. Clark indicated that for each of the new lots proposed, they meet the definition of a minor. There are identifiable lots, that two of them are being re-subdivided. The Lot line adjustment is not creating a new lot. However, the definition of a minor subdivision: " All lots have to front on existing street, which is improved sufficiently to meet the requirements of Section 35..." which is what the variance being sought is about. There are other aspects to be considered: " 5. The resulting lots are suitable for their intended purpose without the necessity of making unusual changes and grades of the lots. The creation of the lots will not produce a drainage problem or result in the necessity for drainage improvements or any other type of off tract improvement. The creation of lots will not adversely affect the uniform with development of any remaining parcel or adjoining land in terms of suitable future road access and desirable future road and lot patterns." Mr. Clark further stated that Blackford Road may qualify by the definition. It is not an improved, State, County or Municipal Roadway. He is not sure if it is a street shown upon a plat, heretofore approved, it probably was.

Mr. Aaroe indicated that they suspect, however they can not demonstrate this evening, that Blackford Road may be shown on a plat filed in the Sussex County Clerk' s Office prior to the appointment of the Planning Board and may then meet the definition of a street or qualify as a street. He stated that Blackford Road serves 33 different residences with Municipal maintenance. The Municipal maintenance consists of snow plowing, they control ice, annually they grade and resurface, they trim back brush, they clear the drainage ditches, they clear the cross drains. This may give it more public attributes than private road attributes. The DEP ownership at either end of the road, the public is invited to access these state lands.

Mr. Clark indicated that looking at the definition of a subdivision, he feels it is a

major partly because of the road situation. If it is truly a dedicated road, then maybe it could qualify for a minor. He understands from a prior application, this may only be a series of easements of rights-of-way and not truly dedicated to the public which would take it out of the definition or at least arguably so. The other issue there is not a road width that meets the township's master plan requirement or road width requirement for Blackford Road.

The board decided to carry this application to the next meeting, until the above information can be obtained by the applicant.

A Motion was made by Mr. Hatler and seconded by Mr. Risdon to carry this application to the April 28, 2004 Land Use Board meeting without further notice. All were in favor. The Motion was carried.

**APPLICATIONS CARRIED FROM PREVIOUS MEETING:**

**Paul Oehlke – LUB 03-08 – Block 26, Lot 13, Allen Road & Bauer Road – “C” Variance:**

Mrs. Kristensen stepped down from this application.

Appearing on behalf of the applicant as his attorney, William Haggerty, Esq., and the applicant, Paul Oehlke.

Also appearing was attorney, John Williams, on behalf of adjoining property owner, Padula.

Mr. Haggerty indicated that this is a continuation of a previous hearing. At the previous hearing the applicant presented testimony from their appraiser and the applicant concluded their presentation at that time. This matter was carried to this evening to give the objector an opportunity to bring in their appraiser.

Mr. Williams submitted to the board a copy of his appraiser's, Phillip L. Cassell, qualifications. Mr. Cassell was sworn in by the board attorney. The board accepted Mr. Cassell as an expert witness.

Mr. Cassell indicated that he used three sales that he considered practical – two of them with houses, one was knocked down and the other one was completely remodeled. The third sale is 75 Lakeview Point in Frankford. This is Culver's Lake, not Lake Owassa. The high values in Culver's Lake are \$900,000. The high values in Owassa are \$300,000 to \$350,000. There is a big difference in price range between the two lakes. The third sale also does not meet an arms length transaction because it is not an unbiased buyer. The man paid a premium for that property to protect his own interest, but most people would not do that without having it perked to see if they could build on it. The only vacant land sales he found were the one on Lakeview Point. He has adjusted the sales for time, he adjusted them approximately 8% per year. He adjusted them for their view. He feels the subject property has a very

limited view due to the fact that there are wetlands in the front. You can not see the lake were the proposed house is going to be. All the other properties have superior view of the lake. He adjusted the houses for utility. He broke down his appraisal down into two different categories, per acre basis and per lake front. The lake front value is a more consistent factor. Mr. Cassell indicated his appraisal came to \$130,000 for the subject property, based on the lot being buildable.

Mr. Cassell indicated that there is a property across the street from the subject property which is a pond and considered wetlands.

Mr. Haggerty indicated that his client knows there are wetlands across the street. His client also submitted to the board an LOI. Mr. Haggerty further stated that Mr. Cassell is a very experienced and qualified appraiser, and by his own admission is not a wetlands expert. He stated that it is not this board's jurisdiction to rule on that particular issue. The applicant has presented the proofs to the board. Mr. Haggerty noted that he has an objection to this exhibit and does not see that it has any bearing on the appraisal.

Mr. Williams submitted to the board a photocopy of a portion from the map in the Heineman file, which is the adjoining lot to the subject property. Mr. Clark marked this as Exhibit " O-1" , which is a Key Map.

Mr. Haggerty noted that this is a copy of a tax map and his objection to it and further stated that why would anyone assume that a pond is accurately surveyed and illustrated on a tax map.

Mr. Williams indicated that the reason for submitting this exhibit, his client's believe that the unresolved issues as to the environmental issues, particularly this high use wetlands that are approximately 25 feet away and the impact as to whether he has met the negative criteria on this case. There is an issue of public good. Mr. Williams stated that if the DEP has said that there are intermediate use wetlands on his property and there has to be a 50 foot buffer zone and you turn from that property and you see, less than 50 feet across the little right of way, there is a turtle bog with a swamp. Mr. Clark indicated that there is no expert here this evening to testify that statement. Mr. Williams indicated that his point is that the DEP has not determined this issue.

Mr. Haggerty indicated that the DEP made an on site inspection of this property and he is sure that the representative from the DEP was diligent enough to look across the street and see what was there. Mr. Clark marked the picture of this " swamp" as Exhibit " O-2" .

Mr. Haggerty questioned Mr. Cassell if the well, septic and site improvements factors went into his appraisal and consideration in determining the comparable status as to those properties. Mr. Cassell agreed. Mr. Haggerty offered to the board copies of a Septic Repair and alteration from Block 271, Lot 6 and Block 271, Lot 29. These documents were marked as Exhibits " A-10" and " A-11" respectively. These were

the two comparable lots that Mr. Cassell referred to in Lake Owassa. Mr. Haggerty questioned Mr. Cassell if the owner of Block 271, Lot 6 incurred the expenses of altering the septic system on property on an older home, would that have a bearing upon the price

effectively that was paid by the buyer of Lot 6. Mr. Cassell indicated that he did take that into consideration. He did not say that the wells are good on those lots. What he indicated was that there is some value to various improvement there. Mr. Haggerty noted, however, that in these particular cases, there was not a value in the sense in one case they had to totally build a new septic system and the other is a repair/alteration of a septic system with a new septic field. In both the cases of the comparables at Lake Owassa, we have those added expenses. Mr. Cassell agreed.

Mr. Haggerty further questioned Mr. Cassell that the Exhibit submitted of the pond across the street from the applicant's property, if this would be a view from the applicant's house to the pond. Mr. Cassell indicated it would. Mr. Haggerty further questioned Mr. Cassell if the view of the pond would be an enhanced value to the property. Mr. Cassell indicated normally it would, but if it is a drainage problem, no. Mr. Haggerty noted now the applicant has a view of water on two sides of his property.

Mr. Williams questioned Mr. Cassell if he spoke to the DEP with regard to the issue of a buffer zone from high use wetlands. Mr. Haggerty objected to a hearsay conservation with the DEP. Mr. Cassell indicated that he called the DEP and his question to them was if there are high quality wetlands across the street, does the buffer zone from that stop when it hits a road. The DEP indicated that no, it would extend across the road into any area.

Mr. Williams submitted to the board a letter dated September 8, 2003 from the Land Use Board attorney to the Zoning Officer on the Heineman property. Mr. Clark indicated that this letter was in response to the Zoning Officer's question if the subdivision is created before wetlands law, then it is exempt.

Mr. Pellow indicated that a lot of times ponds are classified as open water and there is no buffer, they are not wetlands.

A Motion was made by Mr. Hatler and seconded by Mr. Hahn to open this matter to the public. All were in favor. The Motion was carried.

Sands Richie was sworn in by the board attorney. Mr. Richie is a representative of the LOCA (Lake Owassa Community Association) Board. He state that LOCA has a very special Lake and they would like that all site work and construction be subject to the

approvals that the DEP had given. They would also like to request that the work be done by a licensed contractor. The board indicated that they could not enforce that

issue.

Dorothy Oehlke was sworn in by the board attorney. She is the owner of said property. She indicated that the water around their property is beautiful. Her neighbors chose to fill in their swamp, they chose to preserve it.

Marina Perlov was sworn in by the board attorney. She stated her objection to Mr. Oehlke building on this property. She does not feel the swamp is beautiful. She also objected to the noise of his bulldozer. She also objected to the design of his septic system.

Mr. Williams questioned Mrs. Perlov if she had made an offer to the owners of the subject property to purchase the lot. Mrs. Perlov indicated that they have made many offers and have been ignored. Mr. Williams also questioned Mrs. Perlov if the board fixes a fair market value this evening and grant the applicant variances with conditions upon her offering to buy the property, is she and her husband prepared to make an offer to purchase the property. Mrs. Perlov indicated they would like to buy the property at the fair market value set by the board this evening.

A Motion was made by Mr. Hatler and seconded by Mr. Hahn to close this matter to the public. All were in favor. The Motion was carried.

Mr. Clark indicated that this is an undersized lot application. The first matter to be taken care of is the variance should be granted or denied. The board has to be satisfied that the proofs are present. When there is an undersized lot, the affirmative criteria are the hardship, which is the property owner's inability to buy additional land to make it of conforming size. This is present in this application. The next matter is the negative criteria which must be satisfied by the applicant that by granting the variance would not be a substantial detriment as to the public good. In this application would mean the surrounding property values and also as to whether or not there would be a substantial detriment to the zone plan or ordinance. If the board grants the variance, the next procedure would be the Nash procedure. Based upon the expert's testimony, the board has to find what the value of the property is as if the variances were granted. The neighbor at this point, would have to buy the property and merge it with their property at the value set by the board if they do not want the applicant to build on this property. The neighbor could not build on this property if they purchase it. A contract must be entered

into within 30 days by which that price has to be paid and a closing within the standard terms. If there is no contract within the time period allowed, then the variance is granted and the applicant can build on this lot. If the neighboring property owner decides to purchase the property, then the variances are denied. If the board decides not to grant the variance with the conditions, then there is a question as to whether the board has taken all value away from the property. If so, then maybe the township will end up with the property at a value. Mr. Clark indicated that this board does not decide the wetlands issues, the State does and the applicant has provided

proof from the DEP of approval.

Mr. Haggerty indicated that the applicant needs variances because of the setbacks. This is a corner lot and the lot is relatively narrow. The overall size of the property is grandfathered. The property is undersized, not in the gross area, but in the setbacks. The applicants need variances for lot depth, front yard and rear yard and a Planning Variance.

Mr. Williams stated that Nash states it balances the interest of the property owner, the adjacent owner and the township. It encourages the development of property in accordance with relative land use standards. It avoids intrusion of substandard lots or structures, but the property owner is not zoned into inutility, because they get their fair market value. Nash also says that it is especially applicable with vacant residential land that requires variances. He feels this is especially heightened here because of the number of variances that are required. The point of all that is to say, if the board looks at the principals at play, not as to who wants to sell or who does not want to sell, in terms of the Nash principals, the objective principals, he believes it is applicable here. The objector is asking the board to exercise their discretion and grant the conditional variances. His client wants to buy the property. If they buy the property, the township gets a better conforming lot instead of a substandard lot that the board will have to grant all the variances on it. Mr. Williams further stated that it is the objector's argument that the LOI issue, the unresolved issues, as to the environmental issues on that property are such as the applicant has not established that their otherwise entitled to the variances. Mr. Williams asked the board that the condition of the approval, if given, is subject to the unresolved issues with the DEP be resolved.

Mr. Haggerty stated that clearly there is hardship if variances are not granted. The applicant could not build, and would have a picnic area. He further stated that in regard to the Letter of Interpretation and restrictions in the LOI letter, which the letter speaks for itself. The home that is proposed by the applicant is a two bedroom home, which is modest, which is keeping with the lake community. This is a one acre parcel which is the same size as the neighboring property and bigger than most of the lots around the lake. There will be a new septic system and there is a valid LOI. Mr. Haggerty noted that the DEP did inspect the property, they did not neglect to look at the surrounding properties and are well aware of the swamp across the street from this property. The variances are based on the shape of the land. There is no detriment in the zoning scheme or in the community. Mr. Haggerty stated that he is not convinced that the Nash case actually does apply. They are, however, submitting the appraisal as testified to the board. He feels that Nash does not apply, because he feels there is a grandfathered lot. They have a one acre lot and they are requesting bulk variances. He feels the Nash procedure is not applicable because they do not have a standard undersized lot case. There are only bulk variances.

A Motion was made by Mr. Risdon and seconded by Mr. Nadolny to approve the

variances requested: Lot area is 1.01 acres, which 2 acres are required; Lot width is 460 feet; Lot depth is 73 feet requested and 75 feet is required; Front Yard setback is 75 feet required and 24.30 feet is requested; and rear yard setback is 75 feet required and 30 feet is requested. These are the bulk variances. Also the applicant is requesting a Planning Variance. Roll Call:

YES: 4 Ayers, Hahn, Zappile and Romania

NO: 5 Risdon, Hatler, Martin, Nadolny and Gstattenbauer

ABSTAIN: 0

The board members questioned the next step from Mr. Clark. Mr. Clark indicated that the board just denied the variance and the Nash procedure will not take place. Mr. Clark again explained the Nash procedure to the board. It was requested that a new vote be taken on this variance application by the board members because the procedure of Nash was not understood by the board members. A Motion was made by Mr. Zappile and seconded Mr. Hatler to grant the variances requested by the applicant and give the neighbors an opportunity to purchase the lot at a price yet to be determined by the board this evening. Roll Call:

YES: 6 Ayers, Zappile, Hatler, Nadolny, Romania and Gstattenbauer

NO: 3 Hahn, Risdon and Martin

ABSTAIN: 0

The Motion was carried.

A Motion was made by Mr. Zappile and seconded by Mr. Hatler to set the purchase price at \$150,000. Roll Call:

YES: 7 Ayers, Hahn, Risdon, Zappile, Hatler, Romania, Gstattenbauer

NO: 1 Nadolny

ABSTAIN: 1 Martin

The Motion was carried.

A Motion was made by Mr. Hatler and seconded by Mr. Zappile to set the following conditions of the variance: The conditions stated in the original Motion with regard to bulk variances and planning variance. Also, a condition that the house should resemble the plans submitted to the board with the footprint and location submitted by the applicant with the requested number of bedrooms. If the property is not purchased, the applicant shall come back to the board with the specific house style

and color. Roll Call:

YES: 8 Ayers, Hahn, Risdon, Zappile, Hatler, Nadolny, Romania,  
Gstattenbauer

NO: 0

ABSTAIN: 1 Martin

The Motion was carried.

**EXTENSIONS:**

**John and Michele Wingle – LUB 03-20 – Block 25, Lot 13 – Minor  
Subdivision:**

A Motion was made by Mr. Risdon and seconded by Mrs. Kristensen to extend the time for filing the Deeds for 30 days from April 1, 2004. All were in favor, except Mr. Hatler, who abstained. The Motion was carried.

**Wantage Avenue Holding Co., Inc. – LUB 03-22 – Block 24, Lot 12 – Minor  
Subdivision & “D” Variance:**

A Motion was made by Mr. Risdon and seconded by Mr. Nadolny to extend the time for filing the Deeds for 30 days from April 1, 2004. All were in favor, except Mr. Hatler and Mrs. Kristensen, who abstained. The Motion was carried.

**RESOLUTIONS:**

**Joseph Pallay, III – LUB 04-03 – Block 10, Lot 3.13, 30 Linn Smith Road –  
Technical Major Subdivision & “C” Variance:**

The Resolution was reviewed. A Motion was made by Mr. Nadolny and seconded by Mrs. Kristensen to approve the Resolution denying a Technical Major Subdivision & “C” Variance. Roll Call:

YES: 7 Ayers, Risdon, Kristensen, Martin, Nadolny, Romania,  
Gstattenbauer

NO: 0

ABSTAIN: 0

The Motion was carried.

**George and Ann Schoch – LUB 04-05 – Block 27, Lot 7, 86 Plains Road –  
Minor Subdivision cont.:**

The Resolution was reviewed. A Motion was made by Mr. Nadolny and seconded by Mr. Ayers to approve the Resolution for a Minor Subdivision. Roll Call:

YES: 7 Ayers, Risdon, Zappile, Martin, Nadolny, Romania,  
Gstattenbauer,

NO: 0

ABSTAIN: 0

The Motion was carried.

**Tricer Management Limited – LUB 04-06 – Block 19, Lot 10, Newton Avenue – Minor Subdivision:**

The Resolution was reviewed. A Motion was made by Mr. Ayers and seconded by Mr. Risdon to approve the Resolution for a Minor Subdivision. Roll Call:

YES: 8 Ayers, Risdon, Zappile, Kristensen, Martin, Nadolny,  
Romania,  
Gstattenbauer

NO: 0

ABSTAIN: 0

The Motion was carried.

**Tricer Management Limited – LUB 04-07 – Block 21, Lot 6, Morris Avenue – Minor Subdivision:**

The Resolution was reviewed. A Motion was made by Mr. Nadolny and seconded by Mr. Risdon to approve the Resolution for a Minor Subdivision. Roll Call:

YES: 8 Ayers, Risdon, Zappile, Kristensen, Martin, Nadolny,  
Romania,  
Gstattenbauer

NO: 0

ABSTAIN: 0

The Motion was carried.

**Culvermere Alliance LLC – LUB 04-08 – Block 181, Lot 2, US Route 206 & Lakeview Point Avenue – Minor Subdivision:**

The Resolution was reviewed. A Motion was made by Mr. Ayers and seconded by Mr. Gstattenbauer to approve the Resolution for a Minor Subdivision. Roll Call:

YES: 6 Ayers, Risdon, Martin, Nadolny, Romania, Gstattenbauer

NO: 0

ABSTAIN: 0

The Motion was carried.

**Virgil Oliver – LUB 03-05 – Block 63, Lot 4 – Planning Variance Extension:**

The Resolution was reviewed. A Motion was made by Mr. Risdon and seconded by Mr. Nadolny to approve the Resolution for a two year extension on the Planning Variance. Roll Call:

YES: 9 Ayers, Hahn, Risdon, Hatler, Kristensen, Martin, Nadolny, Romania, Gstattenbauer

NO: 0

ABSTAIN: 0

The Motion was carried.

**High Ridge Properties, LLC – LUB 02-15 – Block 1, Lot 10 and Block 4, Lots 2 & 4 – Preliminary Major Subdivision Extension:**

The Resolution was reviewed. A Motion was made by Mr. Nadolny and seconded by Mr. Risdon to approve the Resolution for an extension of time of conditions of the previous Resolution. Roll Call:

YES: 6 Hahn, Zappile, Martin, Nadolny, Romania and Gstattenbauer

NO: 0

ABSTAIN: 0

The Motion was carried.

**BOARD BUSINESS:**

**Invoices:**

The Invoices were reviewed. A Motion was made by Mr. Nadolny and seconded by Mr. Gstattenbauer to approve the attached bill list for March, 2004. Roll Call:

YES: 10 Ayers, Hahn, Risdon, Zappile, Hatler, Kristensen, Martin,  
Nadolny, Romania, Gstattenbauer

NO: 0

ABSTAIN: 0

The Motion was carried

**Correspondence:**

The correspondence was reviewed.

Mr. Clark suggested to the board that he write a letter to the State updating them that the board is having a special meeting to discuss the town center. A Motion was made by Mr. Nadolny and seconded by Mr. Gstattenbauer to have Mr. Clark write a letter to the State with regard to the Town Center. All were in favor. The Motion was carried.

A Motion was made by Mr. Ayers and seconded by Mr. Kristensen to schedule a workshop meeting on April 1, 2004 at 8:00 a.m. at Harold' s office. All were in favor. The Motion was carried.

Mr. Romania indicated that a letter was received from the Township Clerk that information from the Board is requested for the Frankford Township Newsletter. It was suggested that Mr. Martin write a letter with regard to COAH and Mr. Ayers write a letter with regard to the Town Center.

**ADJOURN:**

A Motion was made by Mr. Nadolny and seconded by Mr. Gstattenbauer to adjourn the meeting. All were in favor. The Motion was carried.

Respectfully submitted,

SHARON M. YAROSZ  
Land Use Administrator