

In compliance with the Open Public Meetings Act of the State of New Jersey adequate notice of this meeting has been mailed to The Daily Record and posted at the municipal building.

ROLL CALL:

Members Present: Joe Fleischner, Dan Nelsen, Mayor Robert Greenbaum, Nelson Russell, Steve Bedell, Brian Schaechter, John Mania, David Koptyra, Howie Weiss

Members Excused: Scott Van Ness, Michael Koroski

Professionals Attending: Chuck McGroarty, Planning Consultant, Edward Buzak, Esq., Catherine Natafalusy, Planning Administrator

Professional Excused: Eugene Buczynski, P.E., Tiena Cofoni, Esq.

APPROVAL OF MINUTES

December 20, 2012 Public Meeting

Motion: Joe Fleischner
 Second: Steve Bedell

Roll Call:

Joe Fleischner - yes
 Dan Nelsen - yes
 Nelson Russell - yes
 Steve Bedell - yes
 Brian Schaechter - yes
 Howie Weiss - yes

January 10, 2013 Reorganization Meeting

Motion: Joe Fleischner
 Second: Steve Bedell

Roll Call:

Joe Fleischner - yes
 Nelson Russell - yes
 Steve Bedell - yes
 Brian Schaechter - yes
 David Koptyra - yes
 Howie Weiss - yes

APPROVAL OF RESOLUTIONS

Resolution #PB 02-07 – Toll New Jersey V, LP (Morris Hunt) – Extension – Block 4400, Lots 86 & 108

Motion: Brian Schaechter
 Second: Dan Nelsen

Roll Call:

Dan Nelsen - yes
 Nelson Russell - yes
 Steve Bedell - yes
 Brian Schaechter - yes
 David Koptyra - yes
 Howie Weiss - yes

Resolution #PB 01-04 – Toll Bros./Morris Chase Phase I (Extension) – Block 4400, Lot 79

Motion: Brian Schaechter
 Second: Steve Bedell

Roll Call:

Nelson Russell - yes
 Steve Bedell - yes
 Brian Schaechter - yes
 David Koptyra - yes
 Howie Weiss - yes

Resolution #PB 13-02 – The Land Conservancy – Block 8100, Lot 61

Motion:

MR. BUZAK: Before you do that there's a slight amendment in that related to the Highlands. On page 4, item 1C we added the words at the end of Item C – if applicable. That is the applicant must also obtain a Highlands Exemption for the proposed improvements, if applicable. That was what we intended anyway obviously if they don't need one they don't have to get it but they asked that we include that and we did.

MR. WEISS: Okay obviously I have a copy I'm going to sign with these improvements?

MR. BUZAK: Yes.

MR. WEISS: I'm sorry Steve?

MR. BEDELL: I'll make a motion we approve PB 13-02 Land Conservancy with amendments as stated.

MR. WEISS: And a second?

MR. SCHAECHTER: Second.

MR. WEISS: Thank you Mr. Schaechter. Any questions? Seeing none Catherine roll call.

MS. NATAFALUSY: Dan Nelsen - yes
Nelson Russell - yes
Steve Bedell - yes
Brian Schaechter - yes
David Koptyra - yes
Howie Weiss - yes

NOMINATION OF VICE CHAIRMAN

MR. WEISS: For anybody that was in attendance I think it was last Tuesday we all witnessed that Mr. Staszak was nominated by the Council, and appointed by the Council to take the vacancy left by Pat Walsh. Congratulations to Jim and it left a vacancy here on the Planning Board. Mr. Staszak had to resign immediately actually before he took his oath of office as to not come up with a situation that would be improper to have multiple Council people on the Planning Board. So Mr. Staszak resigned his position before he took his oath of office. That leaves us with a vacancy as the Vice Chairman on the Planning Board and tonight we need to fill that vacancy. And we can move this right along; I choose to nominate Joe Fleischner as Vice Chairman.

MR. RUSSELL: I'll second.

MR. WEISS: Okay is there any other nominations for Vice Chairman? Seeing none I'll close the nominations to the Planning Board and Catherine let's take a roll call on the nomination of Joe Fleischner as Vice Chairman.

MS. NATAFALUSY: Joe Fleischner - Abs.
Dan Nelsen - yes
Mayor Greenbaum - yes
Nelson Russell - yes
Steve Bedell - yes
Brian Schaechter - yes
John Mania - yes
David Koptyra - yes
Howie Weiss - no

MR. WEISS: Joe I know you'll be very capable of filling for the Chairman.

MR. MANIA: Congratulations Joe.

RULES OF PROCEDURE

MR. WEISS: We'll bring it back to old business under Rules of Procedure item J tonight. This was a document when we first introduced back in January we had some good input from Nelson, we had some good input from Steve and Joe I know you had some issues and from what I can tell it's all of the comments that were brought up have been added to the document and the document that we have in front of us represents all of those additions. Catherine maybe you might want to summarize, I know that we added language Nelson based on your input that came from the Board of Adjustment. That might have been Steve I don't recall.

MS. NATAFALUSY: That was Nelson.

MR. WEISS: It was Nelson.

MS. NATAFALUSY: Yeah.

MR. WEISS: And I know that Mr. Fleischner had wanted some regulatory language in here about approaching applicants prior to the resolution and a grace period thereafter.

MS. NATAFALUSY: Right.

MR. WEISS: So we've added all of those, we've added that language

MS. NATAFALUSY: That language that has been added is, I put it in italics so that the Board can see the addition. And I did include the rules from the Zoning Board of Adjustment and I also added time you know a time for the Board to make the decision. I added G and H for variances and appeals from the Administrative Officer and then the last one was a no contact period and that was something that Ed drafted and we included in there.

MR. WEISS: You know its funny Catherine I'm looking at the original copy here and I see no italics but obviously the italics have been

MS. NATAFALUSY: Oh on the original right the one I emailed everybody the other day is, it's in there.

MR. WEISS: Of course. So that being said gentlemen I know we've discussed it at great length the document is kind of a summary of everything we wanted it's here you've had time to review it. Is there any comments, any questions, any concerns? And if not I would entertain a motion that we accept this document and pass it forward.

MR. SCHAECHTER: I make the motion to pass our Rules and Procedures document.

MR. FLEISCHNER: I'll second it.

MR. WEISS: Thank you Brian, thank you Joe. No further conversation, no comments seeing none Catherine let's take a roll call on this.

MS. NATAFALUSY: Joe Fleischner - yes
Dan Nelsen - yes
Mayor Greenbaum - Abs.
Nelson Russell - yes
Steve Bedell - yes
Brian Schaechter - yes
John Mania - yes
David Koptyra - yes
Howie Weiss - yes

MR. WEISS: Nicely done gentlemen it certainly was a work in progress.

COMMITTEE REPORTS

MR. WEISS: Moving on, committee reports Mayor welcome this evening it's nice to have you here.

MAYOR GREENBAUM: Thank you. A couple of things real quick. With Mr. Staszak's resignation not only was there a vacancy in terms of the leadership of the Land Use Board but there was also a Class IV vacancy that was created. Mr. Schaechter was appointed to fill that seat and he's moved over he was my alternate on the Planning Board so he's now a regular member Class IV. And I have offered Judy Johnson to sit in as my Alternate on the Planning Board going forward I thought that her perspective might be a little different than everyone else that's sitting up here right now. She hasn't committed to it but hopefully she will and she'll be a welcome addition and will be sitting in for me going forward. Secondly I'm hopeful, very hopeful that in the very, very, very, very near future we are going to hear about a major addition in Flanders, commercial that is going to acquire approval from this Planning Board within six months based upon grant monies that their receiving from the State of New Jersey. And I expect that to be coming within the next week or two so the Planning Board should be relatively busy moving forward with that application. That's all that I have Mr. Chair.

MR. WEISS: Thank you Mr. Mayor. Mr. Mania welcome back.

MR. MANIA: Thank you.

MR. WEISS: Besides your story about Florida maybe you have a Council report?

MR. MANIA: Well Howie took my thunder away we appointed Jim to the Council, there were three candidates and we felt Jim was the best qualified individual.

MR. WEISS; Well I'm sure he'll serve you well.

MR. MANIA: I'm sure he will.

MAYOR GREENBAUM: Can I add something Mr. Chair?

MR. WEISS: Sure.

MAYOR GREENBAUM: This Tuesday night there's going to be a very interesting discussion about sewerage Old Flanders and if anyone wants to be here to listen or participate it's going to be an interesting Council meeting.

MR. WEISS: Let me ask you before I go forward, Brian maybe I should have you, were you sworn in under a Class IV?

MR. SCHAECHTER: Yes.

MS. NATAFALUSY: Yes.

MR. WEISS: I'm not surprised I just wanted to make sure. Environmental commission, Nelson?

MR. RUSSELL: It was mentioned that the sign outside of this building violates the sign ordinance.

MR. WEISS: I'm not sure what you're talking about. I believe that sign and its ordinance are a being addressed if not already.

MR. RUSSELL: Okay.

MR. WEISS: Chuck is that correct?

MR. MCGROARTY: I'm not sure that it's being addressed, I'm not aware it's being addressed but I'm not sure it violates the ordinance either. The ordinance is silent on LED type signs.

MAYOR GREENBAUM: I suggest you go back and tell the environmental commission to refer the complaint to the Zoning Officer.

MR. RUSSELL: Okay. In redoing the ordinances any developer who has open space which is being turned over to a Homeowner's Association should have conservation easements and trail easements. And we received Sustainable New Jersey Designation.

MR. WEISS: When you say designation were you suggesting, are you suggesting the committee needs a designation on the ROSI? Is that what they are suggesting?

MR. RUSSELL: No for Sustainable New Jersey?

MR. WEISS: No, no go back one. Mt. Olive Association Open Space?

MR. RUSSELL: No it won't go on the ROSI it's just that because it belongs to a Homeowner's Association it doesn't belong to the town but particularly Kathy Murphy wanted trail easements and conservation easements on that open space.

MR. WEISS: Okay.

MR. FLEISCHNER: And they were also hopeful that asking really the Planning Board if those easements could be granted early in the development process so that it doesn't happen at the very end of the development where if it takes three, four years so that the trails will be available for the residents.

MR. MCGROARTY: One thought on that Mr. Chairman I don't think that we're going to see too many more subdivisions, at least of the size that we've had in the past. But quite a number of the subdivisions where there is open space they do have restrictions on them, not necessarily, they don't have trails necessarily but where there are environmentally sensitive characteristics there are conservation easements they just, they don't involve the township necessarily but they are protected and the fear that those properties would somehow be turned around and used for some other purpose I think is ill founded. Because the subdivisions were approved contingent on those areas being set aside as they are and the densities were factored in. But nonetheless you know the point is made about the trails and the like except that we probably won't see too many more large subdivisions.

MR. WEISS: Okay thank you Chuck. Nelson anything else?

MR. RUSSELL: No that was it.

MR. WEISS: Do we have anything from an ordinance committee?

MR. FLEISCHNER: No other than that we need to schedule some meetings.

MR. WEISS: And continue what we started. Of course with no subdivisions we have no new street naming so they'll be nothing to report on that. And the open space committee is a vacancy unless anybody is interested in filling such vacancy? We'll just wait for some kind of news to make our way from the open space.

DEVELOPMENT MATTERS

APPLICATION #PB 13-01 – MICHAEL & LORI ADAMS – Block 5300, Lot 55.10

MR. WEISS: I'm going to alter the agenda slightly and move our discussion matter towards the end of the meeting and move right into our first developmental matter of the evening which will be PB 13-01 Michael & Lori Adams. Requesting a variance on encroaching within the side yard setback. The property is located at 11 Briarhurst Drive, Block 5300, Lot 55.10. This evening Mr. Adams you're certainly welcome to come here and . . . good evening it's nice to see you.

MR. ADAMS: Good evening thank you.

MR. WEISS: What we'll do first Mr. Adams is our attorney will swear you in.

(MICHAEL ADAMS SWORN IN FOR THE RECORD)

MR. BUZAK: Please be seated and again just for the record can you just state your name please?

MR. ADAMS: Michael Adams.

MR. BUZAK: Thank you sir.

MR. WEISS: And Mr. Adams you do live at the property at 11 Briarhurst Drive correct?

MR. ADAMS: Yes.

MR. WEISS: Okay so here is what we're going to do tonight. You're going to tell the Planning Board what you want to do, why you want to do it we're going to look to set some proofs for the record so we'll ask you some questions if you don't understand certainly ask. What we want to do is get an idea of the property, the nature of your development, some of the setbacks and issues that you're having and I should just remind fellow Planning Board members that I did visit this property so I can certainly attest or contradict what Mr. Adams tells us by first-hand experience. So why don't you explain to us what you want to do.

MR. ADAMS: We're looking to put a two-story addition on the westerly side of our house that is off of our master bedroom. And the reason for this is when the house was built we had the master closet removed from the house, and now as our family has grown you know due to space in our house and all that we'd like to put a master closet back. And the only feasible spot would be off the side of our house which is where our master bedroom is. And the reason we're here is because it will go over the side setback I believe by 4 feet and we did notify all our neighbors as per requested by the Board and also spoke to most of our neighbors and you know they're aware of what we are planning to do. We believe it's you know we're going to do it aesthetically to match the look of the house and the other houses in the neighborhood and you know we have no other spots where we could put it because of the topography of our land, the slopes and where the rock wall that runs around it as well.

MR. WEISS: You seem to be making our job quite easy tonight Mr. Adams. I do have a question though, looking at the review that we have your property is about an acre at least on we're told.

MR. ADAMS: Yes.

MR. WEISS: So I want, usually when we look at a property that's an acre and their asking for a small addition that's going to have to encroach the side yard setback perhaps again I think you said it briefly but maybe you want to, oh here's some photographs, explain to the Planning Board why with an acre of property you can't find anywhere else to put this.

MR. ADAMS: Most of our acreage is in the front of the house because again the way, you know we're up on hill so the house was set back so obviously we can't put the addition in the front of the house. The other side of the house is the garage side and there will be no access there and off of the back of our house if it was anywhere near our bedroom we have another room that comes out of the back of the house and that would really have a tough time to match any roof lines next to that. And we would have to then also access that room through our bathroom which again there's not much room to get through there it would only be like a 2 foot opening to get into a closet. So that's why we're stuck with having to go to the side of the house.

MR. WEISS: You know it sounds like you testified that in addition to an irregular shaped piece of property with some slopes and some wall restraints, you also have a unique roof line because I'm looking at the back of the house and I did walk there today and I think I had asked you why you can't put it back here. You had pointed out that there is a series of roof lines that kind of would prohibit this and ultimately maybe you could confirm that this addition is really to help enhance the master bedroom and the master bedroom happens to be on the westerly side of the property. And that's kind of the most natural place for this addition if it's for the master bedroom.

MR. ADAMS: That's correct that's our main reason for doing it is you know for a master closet off of the master bedroom and that's really the only spot that it would work.

MR. WEISS: Catherine do you have the specs of the property as far as what is the side yard setback now?

MR. BUZAK: its 31.7 now.

MS. NATAFALUSY: Right. The existing house is 31.77 from the side lot line at its closest point.

MR. WEISS: And the minimum is what?

MS. NATAFALUSY: 25.

MR. WEISS: 25 okay that was what I wanted to (inaudible) and I see that so essentially you're looking to go over by 4 feet.

MR. ADAMS: Yes that's correct.

MR. WEISS: Okay does anybody have any questions from the Planning Board of Mr. Adams as to what he's testified so far? Catherine can you confirm that notice was sent to all of the neighbors?

MS. NATAFALUSY: Notice was sent to all of the neighbors yes and the newspaper, there was a legal notice put in the newspaper of record.

MR. WEISS: And I guess for the record I'm seeing a few members of the community here and I'm going to assume you're not a neighbor?

?: Yeah I am a neighbor.

MR. WEISS: Okay so there is a neighbor here and obviously we'll open up the meeting if there's any questions. I think at this point our attorney has a question for you.

MR. BUZAK: In addition to the closet Mr. Adams there's going to be a new family room underneath that?

MR. ADAMS: Yes that's correct.

MR. BUZAK: And that will match the same footprint so to speak of the closet.

MR. ADAMS: Yes.

MR. WEISS: Mr. Adams how big is the house in square footage do you know?

MR. ADAMS: I believe around 3700, 3800 square feet.

MR. WEISS: And your addition is simply 135 feet or so? It's not a big addition.

MR. ADAMS: Yes it's not a big addition.

MR. WEISS: Okay does anybody else have any questions?

MR. NELSEN: What did you do with the old closet?

MR. ADAMS: It sat over the main hallway as you walked in and you know when we had the house built it was just one of the things that Toll had offered to take it away because we didn't really like that type of closed hallway we wanted a true center open hallway so we took that away to put in a large platinum window to have a true open center hallway.

MR. WEISS: Well as we all know on the Planning Board the applicant has the responsibility to give us proofs pertaining to the positive and negative criteria and certainly the steep slopes, rock wall a very limited space, unique topography and architecture of the house. I would think that qualifies for that Chuck if there's anything that I'm missing feel free to chime in and Mr. Buzak can do the same. I heard you say that . . . I've been looking at a picture that this addition will not distract from the theme of the neighborhood. I know Bennington Preserve is larger homes and you're not necessarily going to make your home that much bigger or smaller.

MR. ADAMS: No it will not be any larger than any of the other homes in our neighborhood. And again with consideration to the neighbors we're going to do it aesthetically to match the existing brick and siding on the house.

MR. WEISS: So in your opinion will there be any negative impact on the community?

MR. ADAMS: No negative impact on the community.

MR. BUZAK: Do you know what the distance is from the property line to your neighbor's side house on that side?

MR. ADAMS: From my property line to the next neighbor's?

MR. BUZAK: Yes.

MR. ADAMS: I do not.

MR. BUZAK: Is it about the same as

MR. ADAMS: I know it's probably a little bit more than mine and my side has 31 feet, their side definitely has more than that but probably not a lot more maybe 40 feet or so.

MR. BUZAK: I didn't look carefully at the photographs that were passed around.

MR. ADAMS: I did send a photograph of that.

MR. BUZAK: Is there a difference in topography

MR. ADAMS: Yes, yes.

MR. BUZAK: Your lower?

MR. ADAMS: We're lower.

MR. BUZAK: And he's above?

MR. ADAMS: Yes, yes they're above.

MR. BUZAK: And is there any . . . I guess I could look at the photograph and ask the question myself. The bushes that are shown here are those your bushes, the landscaping?

MR. ADAMS: Yes they are.

MR. BUZAK: And is that fence yours as well?

MR. ADAMS: Yes it is.

MR. BUZAK: All right. And that's the driveway side of your neighbor's house.

MR. ADAMS: That's correct.

MR. WEISS: Mr. Mayor?

MAYOR GREENBAUM: Yes just one question. The neighbor that is most likely affected by the variance, did you have a direct conversation with them?

MR. ADAMS: We did.

MAYOR GREENBAUM: And did they have any opposition at all to this?

MR. ADAMS: No opposition at all.

MAYOR GREENBAUM: Okay.

MR. WEISS: Okay if there's no other questions from the Planning Board I will open it to the public if there's anybody from the public that has any questions? If you do you can simply go over to the podium you'll state your name and address for the record.

MS. McMANUS: My name is June McManus and our property is on 43 Tinc Road so I'm fairly new to all of this so kind of bear with me. So I just want to understand basically how it affects our property when you say 4 feet. Is it going into, whose property would that be extending into?

MR. ADAMS: Do you want me to answer it?

MR. WEISS: Mr. Adams could you answer that question.

MR. ADAMS: Yes that's not extending into anybody's property there's just the imaginary building block that's placed on the property that you're supposed to keep your building contained within and we're looking to extend that by 4 feet to the side of our house. It's not going to go . . . I'm assuming your property then comes behind us?

MS. McMANUS: Probably yes.

MR. ADAMS: Okay so it's not going to go in that direction at all it's going to the westerly side of our house towards our neighbor.

MS. McMANUS: Okay.

MR. BEDELL: But it's still on his property.

MS. McMANUS: Gotcha okay.

MR. WEISS: Just looking at the map your house is quite a distance away right?

MS. McMANUS: I didn't get a chance to fully research (inaudible).

MR. WEISS: Well you're on Tinc Road right?

MS. McMANUS: Yes.

MAYOR GREENBAUM: Do you want to see the plans? Have you seen the plans?

MR. WEISS: Essentially what happens Ms. McManus is that this subdivision was designed many years ago and each building lot was designed to keep certain requirements, restrictions in place. So for example the homes were to be built with a minimum of 25 feet to the side, they can't built outside of that to the property line. And front and back (inaudible) maybe someone could help me.

MRS. NATAFALUSY: 60 in the front and 50 in the rear.

MR. BUZAK: Mr. Adams the photographs that you submitted did you take those photographs yourself?

MR. ADAMS: I did.

MR. BUZAK: Do you recall approximately when you did that?

MR. ADAMS: At the time that I put in the application.

MR. BUZAK: All right well I that there's leaves on the trees so it was probably sometime in the fall?

MR. ADAMS: I started the first . . . do it in the fall yes. You know October, November but by the time we got the plans drawn and everything I probably submitted everything maybe in late December and it got on the Planning Board meeting for tonight.

MR. BUZAK: Okay but you probably took the photographs since there's leaves on the trees in September or October, November probably not December it looks like there's a lot of leaves on the trees for December. I just need to get an idea of when you took them that's all.

MR. ADAMS: It might have been a little bit before that I might have used a previous picture that I had taken. I took some at that time but that one might have been existing already.

MR. BUZAK: Is it fair to say that these pictures do accurately set forth what we would see if we went out there today.

MR. ADAMS: Absolutely.

MR. BUZAK: Okay. I'd like to mark these Mr. Chairman for the record we'll mark them A-1, A-2 and A-3 photographs of the premises that was submitted by Mr. Adams.

MR. WEISS: Okay and just also the architectural plans were dated October 17th so it looks like you put all of your documents together around the middle of the fall.

MR. ADAMS: That's when we started yes.

MR. WEISS: Okay any other questions from the Planning Board and if there is nothing else from the public. I'll close it to the public. If anybody else has any comments otherwise I will . . . Brian?

MR. SCHAECHTER: Yeah I did I saw on the pictures there was a sliding glass door in the existing house?

MR. ADAMS: On the side of the house?

MR. SCHAECHTER: Yes. Are you going to put another sliding . . . it looks like on the plans you have a window?

MR. ADAMS: Well that door is a French door that comes off of our living room. We're going to remove that door and then that would be access to the new room which will be below the master closet. And then maybe we will reuse that door to maybe go towards the rear of our property.

MR. SCHAECHTER: Out to the rear.

MR. ADAMS: Yes.

MR. SCHAECHTER: So there won't be a patio or anything off the new addition.

MR. ADAMS: No.

MR. FLEISCHNER: That probably should be in the resolution if this is approved.

MR. NELSEN: Yes that should be a stipulation in the ordinance that there won't be a patio further encroaching out of the building envelope.

MR. BUZAK: We can do that but he's not seeking that kind of relief right now. The plans show that he's just putting in a closet and a family room so . . .

MR. ADAMS: And we're also hampered by a rock retaining wall on that side there would not be any room for a patio.

MR. WEISS: Okay. Would someone on the Planning Board like to make a motion?

MR. RUSSELL: I'll move that PB 13-01 be approved.

MR. MANIA: Second.

MR. WEISS: Thank you Nelson, thank you Mr. Mania. Any comments, questions? Seeing none roll call.

MS. NATAFALUSY: Joe Fleischner - yes
 Dan Nelsen - yes
 Mayor Greenbaum - yes
 Nelson Russell - yes
 Steve Beddell - yes
 Brian Schaechter - yes
 John Mania - yes
 David Koptyra - yes
 Howie Weiss - yes

MR. WEISS: Mr. Adams congratulations, in about a month a resolution will be prepared and signed and at that point then you can pick up your permits.

MR. ADAMS: Okay.

DISCUSSION MATTER

DRAFT MASTER PLAN REEXAMINATION REPORT

MR. WEISS: Okay we have two matters on the discussion. Real quickly I'm going to skip to the second one which is the Draft Master Plan Reexamination. We have a discussion to be had and it's not going to happen tonight the Draft Master Plan Reexamination Report. I've been in contact with Catherine and Chuck on this and my suggestion is that we take this into committee. Obviously of those who have reviewed Master Plans and a Reexamination Report know that it's a lengthy report it can go on for hours and I think that some of us on the Planning Board have had some experience with Master Plan including myself years ago I was the Chairman of the Master Plan Committee so I kind of reached out, took some liberties and asked if I could put together a committee. Joe and Brian have offered to step on the committee I'd like to keep it simple, small we can meet with Chuck and do it around Chuck's schedule and kind of nail it down in one sitting and then have Chuck come back and report to the Planning Board the findings that we thought were most important. So I just thought in an effort to keep it simple move it along if anybody disagrees certainly let's talk about it otherwise I think we'll leave it at that. So Chuck we'll work around your schedule you'll let us know some dates I'm sure Brian's schedule will be the next schedule to take into account and of course Mr. Fleischner is retired and has absolutely nothing to do. So that's the way we're going to handle that.

PB 12-24 – 97 SAND SHORE ROAD LLC – BLOCK 2700, LOT 52.05

MR. WEISS: And the final discussion matter is a discussion matter about a pending possible application that if it was to be heard would be a use variance. And so I spoke to Mr. Buzak earlier today and in an effort to be consistent as we hear use variances as we know that Mr. Mania, and the Mayor are not allowed to sit on a use variance so with no other business I'm going to excuse you tonight Mr. Mania and the Mayor.

MR. MANIA: The Mayor has already left.

MR. FLEISCHNER: Could I just jump to something that I think John really needs to . . . Ed forwarded me a decision that was Land Use Planning with Sharbell Builders and Robbinsville where Sharbell wanted to put in this complex and Robbinsville said we don't want to do this because it's going to add all "X", "Y", "Z" to the town and they took it to the Planning Board and turned it down. They appealed and the Court ruled in favor of Sharbell that they could. And Ed sent me the ruling and then I kind of took it upon myself because my son lives in the town and I had a cup of coffee with the Mayor with my son. And what I found was interesting is that they're now negotiating with Sharbell to turn over the property to the town for open space in consideration of some kind of monetary exchange. So I just found that interesting and that's public record it's not something that you know the Mayor of Robbinsville said in confidentiality. But I'm wondering would this affect anything that we have in town right now? You know this ruling and you know where does it leave Mt. Olive?

MR. RUSSELL: It's similar to what we did with Crown Towers.

MR. FLEISCHNER: Right but what happens if . . . I think the point I'm like what happens if somebody doesn't want to negotiate giving to the town for open space and then still wants to pursue it. Can they do it? Like I'm thinking we still have the Simoff property, will it affect Marveland in any way?

MR. BUZAK: The case to which Mr. Fleischner refers was a conversion case where under a Statute that the Legislature passed a few years ago there was a window of opportunity for developers who had received approvals to build age restricted housing to convert those (inaudible) developments to non-age restricted developments. And that's right we had the Simoff application here, that window has now closed it was closed I believe in July of 2011 through July of 2012 but what happened in Robbinsville and a series of other municipalities the Planning Boards felt that the rug had been pulled out from under them. They had approved these applications based upon age restricted development and all of a sudden they were being converted and they were being converted as of right under the Statute. The criteria that the Legislature had said were minimal and it was virtually impossible for a developer to not meet the criteria that was set. There was some wiggle room in certain aspects of it and I won't go through the whole history but needless to say virtually every conversion application that was

submitted that was denied was then appealed and reversed. Most of them that were denied at the Planning Board level were reversed completely. There was only one that was not and that was based upon a redevelopment plan, well there were two, one was based upon a redevelopment plan under the redevelopment law where the developer had signed a contract with the municipality to build an age restricted development and the court said that they could not utilize the conversion act in order to subvert their contract and the municipality and the developer had contractual rights to that. The second one was one where the developer, talking about pouring salt into the wound, not only did he attempt to change from age restricted to non age restricted but then he attempted to add units to the development. So the Planning Board turned him down and the Judge sustained the denial of that on the basis that he was adding units to it so I mean he just took it to another level. Every other straight conversion has been, if it's been denied it's been reversed by the court. So in Mt. Olive we have one we approved it as everyone who was on the Board at the time knows. We also had the Marveland Farms application that came in at the same time that this legislation was adopted by the legislature and you will recall those of you who were on the Board at the time that we were somewhat perplexed that here the legislature is passing a law that says developers who have age restricted approvals can convert almost as of right to a non age restricted because there was a glut of age restricted housing in the state and it was just sitting vacant and approvals were not being acted upon at a time when we were in an economic downturn. And then we in Mt. Olive have a major application for age restricted housing. And I shouldn't say we were perplexed, I was perplexed from the development and certainly the developer was aware of all of that. But he obtained his approvals the window has closed for anyone to convert so I have to say with some hesitation but nonetheless correctness that there's no window right now. Now that doesn't mean to say the legislature in its infinite wisdom decide that you know in order to stimulate the economy we're going to do this again because it worked so well the first time and you know a window would open up and maybe we'd get that kind of application. But barring that I think we're probably okay. But barring that is a relative term.

MR. MANIA: Yeah that's for sure.

MAYOR GREENBAUM: I think that's just a lawyer's term just not giving us a definitive answer.

MR. WEISS: All right well thanks Joe for bringing that up. Now as I was saying Mayor and John . . . the rationale is that if we go forward it will be a use variance and there's no reason to have a record of the Mayor and Council having conversation so good night gentlemen there will be no further business. And so the issue that's at hand and it's in our packet tonight you see a letter from Mr. Hashemi requesting that we consider his application. There's a little bit of history here and maybe I can give you a brief background that Mr. Hashemi did come in front of the Land Use Board or the Board of Adjustment at the time I should say and delivered a similar, maybe Ed could clean up my language but a similar application that was denied by the Board of Adjustment. And now Mr. Hashemi is trying to bring a plan that is eerily close to that. His argument is in front of you that he feels it's a different application I think Catherine felt that it was too close and felt that we should discuss it and perhaps get a legal opinion on it. So our conversation tonight is going to be if we feel that this application, of course we haven't heard it, but does he have the right to bring a similar application or the same application in front of today's Land Use Board. That's kind of a summary Ed I'm sure you could do a . . .

MR. BUZAK: Well let me just set forth the law and Mr. Hashemi has essentially set it forth in non legal terms. An applicant who is denied an application by a Board of Adjustment or a Planning Board has a right to appeal that, he has a right to appeal it to the court and he has to do that within 45 days of the date that the action is taken. If the applicant does not appeal that decision stands. An applicant cannot wait a period of time, whatever that may be, and decide to come back before the Board and say okay I didn't make it the first time I'm going to try it again. I mean this is not like your College Board test or whatever.

MR. BEDELL: Unless there's like major changes that would then maybe warrant a different application.

MR. BUZAK: That's correct, that's right. If there were changed circumstances or the application itself is different in a significant way then the applicant could certainly come back. But he can't just keep coming back over and over again until such time as he either gives up or he gets his approval. And that doctrine is called res judicata and it's a legal doctrine but it's also applied to the Administrative field here. In this case as the Chairman said Mr. Hashemi or this organization actually it was the same owner 97 Sand Shore Road LLC applied to the Zoning Board of Adjustment for a use variance to convert the existing structure there which I understand according to the resolution was or is a restaurant, I guess it was a restaurant to a single-family residential home. The Board of Adjustment heard the application adopted a comprehensive resolution in which they denied the relief and they also

(inaudible) gratuitously in their resolution took into account what would have happened if the property were vacant. In other words he was attempting to convert that structure into a single-family residential home. And the Board's language is very telling, in paragraph 6 of their resolution of December 20, 2004 which (inaudible) Mr. Hashemi again by Catherine it reads "if this application proceeded as an original matter without the presence of the existing structure the Board has no difficulty whatsoever concluding that the applicant could not justify a departure from the provisions of the ordinance to permit the creation of a residence." So they not only, they decided the application that was before them obviously which was a conversion but they also gave us some insight as to their thinking as to whether it would have made a difference whether it was an existing structure there or not. And they obviously came down on the negative side, that was not a decision they made but it certainly gives you some flavor of what they were thinking when the application was prepared. The issue before us today is whether this is essentially the same application. Mr. Hashemi in his email from yesterday sets forth some distinctions and I'll need not go through them we'll put them in the record and the record should reflect that we were referring to Mr. Hashemi's March 13, 2013 email to Catherine in which he sets for three reasons that he thinks the application is different now than it was back then. What he does not address is really the core application. The core application that was heard by the Board of Adjustment was a use variance that is whether he would be able to utilize an "L" zone property, a non-residential for residential purposes. That was the variance that was before the Board. How that was necessarily going to be accomplished whether you're going to build a new structure, or you're going to use the existing structure, whether the parking was going to be on-site or going to be on an auxilliator and associated lot were not really the issues that were before the Board. It was evidence that was presented it was on the record but the dominant issue that the Board had to decide was whether the applicant was entitled to use that property for residential purposes as opposed to the use that the zoning sets forth which is non-residential purposes. And the Board decided negatively that is that he was not entitled to it under the law that he failed to meet the criteria for that. The changes that Mr. Hashemi refers to are certainly changes not utilizing the old foundation or the old well and instead building, effectively raising the existing structure, putting a new structure using a new well instead of the old well, parking on the premises that is on this particular Lot 52.05 as opposed to the I keep calling it the auxiliary lot Lot 51. But the question is whether that goes to the core issue that the Board decided so that's the question before this Board. I have my own view on it but this is a decision that the Board has to make. If the Board decides that this is a sufficiently different application than the one that was rejected in 2004 than they should proceed to hear it. That doesn't mean to say that if they hear the application they're going to grant it but they you know should hear it. On the other hand if they feel that the application is for all intents and purposes the same application that it heard (inaudible) Land Use Board the Zoning Board of Adjustment heard in 2004 than they should say that the application is barred and advise the applicant that they are not going to hear it on the basis of res judicata. We put a resolution together one way or the . . . in that case we put a resolution together that the Board would then approve at the next meeting setting forth the reasons for that determination. And of course he'd have the right to appeal that to the court and see if a court would decide that it's not the same application. If the Board decides that it is not the same application and wants to hear it we would not adopt a resolution we would simply advise him of that, we'd schedule it and we'd hear it after he gave notice to the surrounding homeowners and also published notice.

MR. RUSSELL: If there were a fire and the restaurant burned down would he be allowed to rebuild on the same foundation?

MR. BUZAK: The answer is no if the structure were completely destroyed he would not be able to reuse that structure unless it meets all of the current zoning criteria and that I don't know. I don't know if that structure as is would meet it. If he wants to build a new structure yes he could build a new structure provided that it could meet whatever the zoning requirements are. So let me, perhaps I confused people, the use is a permitted use so if the structure burns down . . .

MR. MCGROARTY: No.

MR. BUZAK: Oh it's not.

MR. MCGROARTY: No.

MRS. NATAFALUSY: It's in the Lake Zone that's why he's coming in.

MR. MCGROARTY: No the restaurant is not . . .

MR. BUZAK: No the restaurant.

MRS. NATAFALUSY: Oh I'm sorry.

MR. BUZAK: I thought the restaurant was a permitted use.

MRS. NATAFALUSY: No.

MR. BUZAK: Let me stand corrected and I'll pass it to Chuck I thought it was a permitted use in the zone, the existing restaurant.

MR. MCGROARTY: No I just wanted to just add one point.

MR. BUZAK: Yes go ahead.

MR. MCGROARTY: I have nothing else to say on that. It's just that

MR. BUZAK: Okay it's not a permitted use is that what you're saying?

MR. MCGROARTY: That's correct the restaurant is not.

MR. BUZAK: The restaurant is not all right so he would not be able to use that as a restaurant if it was completely destroyed.

MR. NELSEN: And what consideration if any would be given to the fact, and I can't exactly I was on the Board when this came before us and I can't quite remember the exact timing of it. But at the time this restaurant had the lot across the street for parking and then it had an additional lot across the street for parking. He has since, and I think I'm not sure if this was after the Board's decision, he has since built a house on one of those lots and if I'm not mistaken also he has sold off his liquor license.

MR. MCGROARTY: That was a different application.

MS. NATAFALUSY: Right.

MR. MCGROARTY: That's when he came in to reopen it as a restaurant and use those two parcels for off-street parking.

MR. NELSEN: No he wanted to . . .

MR. MCGROARTY: Yeah, yeah no it was.

MR. NELSEN: Well what I recall is he had come in and wanted to turn it into a house.

MR. MCGROARTY: He did that was a separate application.

MS. NATAFALUSY: That was another application.

MR. MCGROARTY: And so the two lots on the opposite side of the street had no utility for him when he was seeking a use variance to convert it to residential. He did need them, you're quite right; he needed them when he wanted to reopen it as a restaurant yes.

MR. NELSEN: Right but they were gone at that point.

MR. MCGROARTY: At some point but he had lost the variance of that or he withdrew I don't know which. It was a separate application from the one that the resolution speaks to this evening.

MR. NELSEN: But I just can't remember the timing of it. Had he sold the license?

MS. NATAFALUSY: He came in for a certification preexisting I think for the restaurant. But that was after he built the house on the lot across the street that used to have the parking.

MR. NELSEN: Right.

MR. MCGROARTY: I would say though it really has nothing to do with this because he doesn't need . . . he's not asking to incorporate, he's not, that was part of the use variance that was denied for the residential that was in this resolution.

MR. NELSEN: Right. Would that again reinforce the Board's position that . . .

MR. MCGROARTY: Well now you're getting into the merits of his arguments as opposed to whether it's just a . . . aren't you? I mean really you don't want to hear the . . . you don't want to . . .

MR. RUSSELL: Reading the original resolution on this I don't see where the conditions change. The Board said in essence that a restaurant by further meeting the recreational aspects of lake front property then a residence would. That hasn't changed it's still . . .

MR. MCGROARTY: Well the restaurant I think it's worth noting that the restaurant is not a permitted use either.

MR. RUSSELL: Correct. I mean about the only permitted use for that is vacant land.

MR. MCGROARTY: Well no there's some limited uses that the Lake District allows but they're water related they're not dwellings, not commercial uses, not restaurants and things of that nature.

MR. WEISS: Can you give us an example of what would be allowed?

MR. MCGROARTY: Yes. The Lake Zone covers the shore line and it does not extend past you know Sand Shore Road or Route 46 or in the back.

MRS. NATAFALUSY: Piers, docks, boathouses and antennas for wireless telecommunication services are permitted principal uses.

MR. NELSEN: What was the first one you said Catherine?

MRS. NATAFALUSY: Piers.

MR. RUSSELL: Well the restaurant was named The Boathouse and it did have docks out behind it and it acted as kind of a marina.

MR. WEISS: But I guess the point and Joe just reminded us that back in 2004 Mr. Hashemi came in front of us for a use variance and today he's proposing to come in front of us for a use variance.

MR. BUZAK: And it's for the same type of use it's not like I want to use this for something that was not permitted but it was a residence. I don't know an office building.

MR. RUSSELL: The previous owner of that building applied to extend the building and was denied.

MR. WEISS: Do you remember where he was extending?

MR. RUSSELL: Into the lake.

MR. MCGROARTY: I don't know when that was I mean I've been here since 1989 and it was before my time. But I think the question though of the use variance is the question . . . and I'm not here to defend or argue his case for him certainly but I mean Ed layed it out for us before. Are the circumstances different enough now than his prior application that he's entitled to another shot?

MR. WEISS: So that's really the question that's before us tonight. Is the application different enough from the 2004 to now.

MR. BUZAK: Or have circumstances changed in that area that would be different than they were back then.

MR. BEDELL: Have we allowed anybody to build a house on the lake since 2004? Like if we granted like five other families then I can see him saying well hey you've let these five other families do it why not me. If that's not the case then . . .

MR. MCGROARTY: Well I think the answer to that is there's few and far between. Again I can't remember anyone else ever coming in because you're talking again about the shore line. And so much

of the shore line wouldn't accommodate you know a structure like that and you know the restaurant that's out there today, and this is now this is in the Preservation Area correct?

MS. NATAFALUSY: It's in the Preservation Area.

MR. MCGROARTY: It's in the Preservation Area so that's just another layer of challenge that you someone have to face. So what's there today well it predates what's there today predates the current standards in the ordinance.

MR. WEISS: So Mr. Buzak if the Planning Board is to give an opinion that we don't feel that we should hear this application are you confident that you have a legal backing in a challenge?

MR. BUZAK: Well I think based upon the information that we have in the file based upon the maps that were utilized back then, based upon the resolution and based upon my understanding of the law I think we do have a basis to support that kind of decision.

MR. WEISS: Okay I don't need to hear anymore. Shall we take a vote?

MR. BUZAK: I think we should do this the same as we would otherwise do a resolution so someone should make a motion that this application, if you're going in that direction, that this application that this application is substantially the same as the application that was denied by the Zoning Board of Adjustment on December 20, 2004. And therefore the Board is prevented from hearing this application on the basis of res judicata and the attorney will draft a resolution outlining in more detail the reasoning for that.

MR. WEISS: Or totally the opposite position.

MR. BUZAK: Or totally the opposite position.

MR. WEISS: So if someone would make a motion either way.

MR. FLEISCHNER: I move whatever Ed said, the resolution the first one that we deny this.

MR. WEISS: Okay so Joe made a motion that we not proceed and not hear this application based on

MR. BEDELL: The similar application from December 20, 2004.

MR. WEISS: Right and situations that have not changed and there's other words that our attorney will throw in to help us with the legal end of this.

MR. SCHAECHTER: I'll second that motion.

MR. WEISS: So Joe made the motion and Brian second it. Is there any other comments? Seeing none Catherine roll call please.

MS. NATAFALUSY: Joe Fleischner - yes
Dan Nelsen - yes
Nelson Russell - yes
Steve Bedell - yes
Brian Schaechter - yes
David Koptyra - yes
Howie Weiss - yes

MR. WEISS: Okay well that's unanimous. As we look forward gentlemen we have . . . we're not going to have a meeting next week.

MS. NATAFALUSY: We're going to cancel next week's meeting the next meeting is April 11th.

MR. WEISS: April 11th and we'll have one April 18th and it looks like we're going to start to get busy. April 11 should bring some excitement I understand it will have the Sorrano application in front of us.

MS. NATAFALUSY: The appeal.

MR. WEISS: An appeal.

MS. NATAFALUSY: And the Jehovah Witness application is coming that night too.

MR. WEISS: Anything else? So we'll get together next on April 11th. Then I will entertain a motion to adjourn.

MR. BEDELL: I will make that motion.

MR. RUSSELL: Second.

MR. WEISS: All in favor?

EVERYONE: Aye.

(MEETING ADJOURNED AT 8:00 P.M.)

Transcribed by:
Lauren Perkins, Secretary
Planning Department