

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: Judy Johnson, David Koptyra, Dan Nelsen, Nelson Russell, Scott Van Ness, Howie Weiss

Members Excused: Joe Fleischner, John Mania, Brian Schaechter, Michael Koroski

Members Absent: Kim Mott

Professionals Attending: Chuck McGroarty, Planning Consultant, Eugene Buczynski, Township Engineer, Edward Buzak, Esq., Catherine Natafalusy, Planning Administrator/Secretary

Professionals Excused: Tiena Cofoni, Esq.

APPROVAL OF MINUTES

January 16, 2014 Public Meeting

Motion: Scott Van Ness
Second: Dan Nelsen

Roll Call:

Judy Johnson - yes
David Koptyra - yes
Dan Nelsen - yes
Scott Van Ness - yes

COMMITTEE REPORTS

MR. WEISS: Committee reports Ms. Johnson anything from the Mayor?

MS. JOHNSON: There is no report from the Mayor tonight.

MR. WEISS: Okay Nelson anything from the environmental commission?

MR. RUSSELL: We discussed well testing for the 3rd and 4th of May that's about it.

MR. WEISS: Okay. Ordinance committee Joe is not here, Catherine are we still on schedule for next Thursday to have that ordinance committee?

MS. NATAFALUSY: Yes we're going to do the Highlands Preservation Area and zoning ordinance.

MR. WEISS: It will be a Planning Board/Ordinance Committee.

MS. NATAFALUSY: Highlands Redevelopment.

MR. WEISS: In conjunction with the open space committee and the environmental commission.

MS. NATAFALUSY: And the recreation committee has been invited as well and Jill is going to be here.

MR. WEISS: Okay so that's still on schedule for next week.

MS. NATAFALUSY: Yes.

MR. WEISS: Street naming committee I have nothing. Open space Dave?

MR. KOPTYRA: We meet Monday.

MR. WEISS: Okay and I skipped over Council because Mr. Mania is not here.

APPLICATION #PB 14-02 – DAVID & JUDITH DOWNS

MR. WEISS: That brings us to our first developmental matter of the evening. The first application is PB 14-02 David & Judith Downs requesting a variance for an accessory structure. Encroachment into the front yard setback located at 39 Main Street, Block 5501, Lot 8. Mr. & Mrs. Downs if you would come up to this table what will happen is our attorney will swear you in and we'll go through the application.

(DAVID & JUDITH DOWNS SWORN IN FOR THE RECORD)

MR. BUZAK: Just for the record can you state your names and addresses spelling your last names again just for the record.

MR. DOWNS: Well its David & Judith Downs 39 Main Street, or Main Road as it's sometimes called Flanders, New Jersey.

MR. BUZAK: (D-O-W-N-S) right?

MR. DOWNS: (D-O-W-N-S).

MR. BUZAK: Thank you sir.

MR. WEISS: Okay so the process tonight just to keep you relaxed and calm is that you're going to give us some testimony for the record. According to Land Use you have some proofs we'll certainly help you we're just looking for testimony for you to explain to the Planning Board what you want to do, why you want to do it. In front of us all we have a copy of the Planning report that you have. So what I'd like you to do again we're creating a record as if you would just tell the Board as if we don't have any of this in front of us. Tell us what you want to do and why you're here.

MR. DOWNS: All right so I have a few notes and if you bear with me I'll just kind of work through them. So we're at 39 Main Road, Flanders and we've been there since 1970. The house fronts on Main Road and there's a right-of-way at the rear which exists on paper only I learned a new term, paper road and that's what we're here about. So there are two very old buildings on the back of the property and these buildings they were really badly neglected even before we bought the property. And we've done kind of minimal maintenance on them on these buildings we've kept them painted we repaired the roof if necessary. But improving them in our view would be prohibitively expensive for us. And it's because of the conditions of the buildings that we can't utilize the space well and there's safety issues with rotting floors and crumbling foundations. There are really in bad shape. So we decided to have these buildings torn down and to erect a freestanding two-story two car garage near the site of the old barn which is on the back or what I call the back of the property. It actually fronts on this other right-of-way.

MR. WEISS: That other right-of-way is Schmitt.

MR. DOWNS: Yeah it would be a continuation of Schmitt Lane. Schmitt Lane is only paved down to the north corner of our property which is just before you get to this barn that we're talking about. So we believe this would improve the overall value and appearance of the property and it would provide us with a useable garage and storage space as well. However, the presence of the right-of-way requires 100 foot setback for the new building and this would locate the new garage roughly in the middle of our backyard. It would kind of be in the middle of our property which is like 240 some feet from front to back which really isn't acceptable to us. So the section of the right-of-way what we're talking about at the rear of our property it's never been used in the time that we've been there it's grass and it actually has some large trees growing in one section of it. It's definitely not a thoroughfare it ends up at the adjoining property, the property just to the right of ours as you face it that's where the right-of-way ends. So if you have that package if you could look at figure 1 it's one that says The Schmitt property and its goes back to 1953 . . .

MR. WEISS: One second would you just explain what figure 1 is.

MR. DOWNS: I'll tell you what it is it's . . . The original Schmitt property is that pentagon you're looking at and in around I guess 1953 that's the date on that, the builder subdivided it. He was actually the grandson of the owner and he subdivided it into those different parcels that you see on there. And what I suspect, I mean I don't know for sure, is that they included that right-of-way so that

there would be access to that property just to the right of us it's number 6 on that drawing. So we're not proposing anything about the right-of-way I mean we've talked to our neighbor about it if he ever wanted to have access to the back of his property he could use that that's fine with us. The problem with us is we don't want to be setback the 100 feet from it. So now if you look at the overhead shot it's from Google maps it's a screen shot that's figure 2 it shows you how Schmitt Lane comes down you know it comes off Main Street, makes a right hand turn, comes down toward that barn that you see and it's only paved right to that north corner right just about where the barn begins. And beyond that it's just grass and trees. So the barn, and the barn definitely predates the right-of-way is actually about 14.4 feet from that what is the right-of-way. And there's also if you notice across the right-of-way from the barn there is an existing three, it's essentially a three car garage that's on the opposite property and it's also fairly close to the right-of-way.

MR. WEISS: Go back to that three car garage; does that belong to the home that looks like its goes with the Johnson home?

MR. DOWNS: It's actually Gierveld now but it's on that property. The property is triangular.

MR. WEISS: I just want to make sure that that three car garage is . . .

MR. DOWN: Johnson was the builder who actually did the subdivision.

MR. WEISS: It's a much more modern looking structure too. That doesn't look anything like your red barn.

MR. DOWN: No, no it was actually put up since we moved there. So we're requesting a variance on the setback so that we can locate the new freestanding garage near the site of the existing barn. We would setback further from the right-of-way, maybe roughly 28 feet and you would be able to enter that garage from either end of our property. The driveway goes all the way through the property to Schmitt Lane, from Main Road to Schmitt Lane.

MR. WEISS: Okay so if I heard you clearly you had said that if you were to conform to the bulk standards as it applies to your property today this barn would end of kind of in the middle of your yard.

MR. DOWNS: Yeah we have a small what we call a two story shed I don't know you mentioned you were there today I don't know if you saw that.

MR. WEISS: I saw it it was more right in the middle of your yard.

MR. DOWNS: And if you saw it I had a red pylon out there because I measured back 100 feet it's almost back to that shed.

MR. WEISS: Okay and do we need to have testimony about the type of structure that they're going to build or is that for the building department?

MR. BUZAK: No we don't need testimony on that. I had a question on it but I don't think we need testimony.

MR. DOWNS: We're fortunate enough our contractor Jeff Gunther from German Valley Construction was willing to come with us and if there's any technical questions he could address it.

MR. WEISS: Let's hold off until we have a question that they might need to address. Ed did you want to address your question about the construction?

MR. BUZAK: Yes you mention a two story garage and when I looked at the elevation I would consider it a one story garage.

MR. DOWNS: Yeah I guess the distinction is there would be stairs to an upper level which would be storage space. It's only 9 feet at the peak and it's . . .

MR. BUZAK: Right so it wouldn't be a room or anything, it would not be dormers on the upper garage it would be peaked 9 feet in the middle and then sloped on the sides.

MR. DOWNS: Correct.

MR. BUZAK: Okay.

MR. WEISS: Does anybody have any questions about the construction of the barn? Again we're here to talk about the location of this new garage and it's your obligation to show the Planning Board that you have a unique situation whether it's a irregularly shaped lot and it certainly sounds like any piece of property that's got two fronts, is that accurate?

MS. NATAFALUSY: Two front yards.

MR. WEISS: Two front yards certainly qualifies for a unique piece of property it's unusual in its shape and I would certainly agree that those are indications for your positive criteria. Additionally you made it very clear to the Planning Board that by conforming with the bulk standards this garage would end up in the middle of your yard which is not very practical and that certainly is a criteria for a variance. Let me ask you some other questions, although I know the answer. Would you say that there are other homes in the neighborhood that have similar garages that you're intending to build?

MR. DOWNS: I guess not.

MS. DOWNS: There is some freestanding garages but there's . . .

MR. WEISS: Okay so some of your neighbors have garages, freestanding garages.

MR. DOWNS: Right.

MS. DOWNS: But they're old and came with the house.

MR. WEISS: But they have freestanding garages.

MR. DOWNS: Yes.

MR. WEISS: Good. Okay and would you say if I asked you if the construction of this garage would take away from the neighborhood, would it take any value from your home or from the neighbor's home?

MR. DOWNS: No I think it would improve the overall appearance. What we plan to put up there is a building that would be prefabricated and made by a company named Homestead and assembled on site on a concrete slab. And it would be, if you've been to our property very similar to the smaller building that we have right behind the house.

MR. WEISS: Which I did see today I went to look and it's a very good looking structure.

MR. DOWNS: And we plan to paint it barn red so it will look like the existing barns.

MR. WEISS: So the granting of this variance will not cause any substantial detriment to the flavor of the neighborhood.

MR. DOWNS: I don't think so I mean we've spoken to our neighbors they all seem to be fine with it.

MR. WEISS: Okay Ed would you say that the Downs' have shown us the proofs of positive and negative criteria?

MR. BUZAK: Well let me ask one more question to complete the loop here. The three car garage that's on the other side of Schmitt Lane, do you know about how far back from the Schmitt Lane right-of-way that is located?

MR. DOWNS: There is a picture in the package you can see the corner of it along with the barn, let me tell you which one that is it's Figure 5.

MR. BUZAK: And that's to the left?

MR. DOWNS: It's to the left and that pine tree there is right on our property line and so if you go left from that pine tree you will go cross the right-of-way and then this building is right there.

MR. BUZAK: I mean it would appear that that's even closer to the right-of-way than your building.

MR. DOWNS: It's similar distance.

MR. BUZAK: And certainly more than your new building will be because that will be pushed further onto your property.

MR. DOWNS: Yes that's correct.

MR. BUZAK: No further questions.

MR. WEISS: Okay and again you said that this new garage structure will be built approximately 28 feet from the . . .

MR. DOWNS: Yes that's where we'd like to put it.

MR. WEISS: Okay which is substantially further back than where it is now.

MR. DOWNS: Yes.

MR. WEISS: I have no other questions for the Downs' does anybody on the Planning Board? Okay at this point let me open it to the public, does anybody from the public have any questions for the Downs based on the testimony that they've delivered? And I see none; if you have any other questions we're satisfied.

MR. DOWNS: Okay.

MR. WEISS: Okay at this point then . . .

MR. NELSEN: I'll motion we approve Planning Board 14-02.

MR. WEISS: Thank you Dan.

MR. RUSSELL: I'll second it.

MR. WEISS: Nelson thank you very much. Is there any comments? Catherine anything, Chuck?

MR. MCGROARTY: Nothing.

MS. NATAFALUSY: No.

MR. WEISS: Okay roll call.

MS. NATAFALUSY: Judy Johnson - yes
David Koptyra - yes
Dan Nelsen - yes
Nelson Russell - yes
Scott Van Ness - yes
Howie Weiss - yes

MR. WEISS: Okay so what's going to happen in about a month we will sign the resolution and at that point you can take your resolution to the Building office and get the building permits. All right have a good evening.

MR. DOWNS: Thank you.

APPLICATION #PB 14-01 – ANTHONY RUCERETO

MR. WEISS: Okay the next developmental matter is PB 14-01 Anthony Rucereto looking for a minor subdivision 43 Indian Springs Road Block 1800, Lot 48 & 49. Bob Correale welcome nice to see you again here in Mt. Olive Planning Board.

MR. CORREALE: It's my pleasure.

MR. WEISS: It's yours when you're ready.

MR. CORREALE: Thank you I just want to indicate for the record my name is Robert Correale I'm a partner in the law firm of Brady & Correale in Morristown and we represent the applicant Mr. Rucereto who is here to my right. Very, very briefly the applicant is the owner of 43 Indian Spring Road Block 1800, Lot 49, the applicant and a Mr. & Mrs. Smith a Robert and Loretta Smith they're the owners of the adjacent property at 44 Indian Spring Road Block 1800, Lot 48. And they were in litigation and they recently settled that litigation and they agreed or the agreement was that the applicant could apply for a minor subdivision for a lot line adjustment whereby a portion of the Lot 48 would be added to Lot 49. Other than the lot line adjustment no other changes or improvements are proposed. I have one witness tonight that is the surveyor Scott Bleeker here in the first row and of course the applicant is available to testify if the need arises.

MR. WEISS: Okay I think that maybe this is (inaudible) so Chuck maybe I'll turn to you for guidance.

MR. MCGROARTY: Gene did a report on this.

MR. WEISS: I just didn't know if you wanted anything when it comes to the lot.

MR. MCGROARTY: No.

MR. WEISS: Okay let me then turn to Gene who prepared the . . . Mr. Buczynski our town engineer has a report on this. Gene if you would review the report.

MR. BUCZYNSKI: Yeah this one is pretty simple we had gone back and forth with the land surveyor as far as completeness goes and they pretty much corrected the plan to our satisfactions. And as Mr. Correale said it's simply a lot line adjustment there's certain I guess amenities on one lot that should have been on the other lot so they're basically trying to clean up that confusion and make everything proper so everything that belongs to Mr. Rucereto is on his lot. That's really it, that's as simple as it is. Existing Lot 48 consists of 1.83 acres and existing Lot 49 consists of 4.45 acres. After the lot line adjustment the new Lot 48 will consist of 1.09 acres and the new Lot 49 will consist of 5.20 acres. As Mr. Correale said there's no variances involved it's a pretty simple lot line adjustment. The only things we called to your attention as far as the deed descriptions to be submitted for the new lot and to be approved by the Board engineer, Board attorney and just a note that sometimes applicants forget that there's a requirement to file a plat a subdivision deed within 190 days from the date of adoption of the resolution. That's why in the past if you recall sometimes people come back to get a re-approval because they missed the time period. So I just want to make that aware to them. But I think they're very anxious to get this finalized anyway.

MR. CORREALE: Well we are anxious plus there's some time constraints in the settlement agreement related to the litigation.

MR. BUCZYNSKI: And the only item regarding the planning goes, but I think it can be handled in the deed too is Item number 3 in my report the zoning table on Lot 48 should be revised to show the principal building proposed front yard to be 51.3 to be consistent with the plan dealing with the proposed rear yard to revise the 122.3 consistent with the plans. It's just minor changes, that's it other than that I have no other comments.

MR. WEISS: And I know you said it in various languages but by granting this lot line adjustment we are not creating a substandard lot.

MR. BUCZYNSKI: No we are not.

MR. WEISS: Okay, that's usually one of the only concerns I have when we do this. I don't want to . . . I know you brought your land surveyor if you thought there's anything he would have to add to the conversation.

MR. CORREALE: I sensing maybe it's not necessary to have him sworn in. We brought him just in case it became necessary.

MR. BUZAK: What I'm going to do so we have some testimony from the applicant here or from the surveyor is I would swear him in and perhaps we can just short circuit it by asking him whether he has any disagreement with Mr. Buczynski's articulation of the situation or if he has anything to add. So with that let me, sir if you can stand I'll swear you in Mr. Correale can you just grab that Bible that's in the front there.

(ANTHONY RUCERETO SWORN IN FOR THE RECORD)

MR. BUZAK: Please be seated just identify yourself please for the record.

MR. RUCERTO: Anthony Rucereto.

MR. WEISS: And can you do is spell your last name?

MR. RUCERETO: (R-U-C-E-R-E-T-O).

MR. WEISS: And your address?

MR. RUCERETO: 43 Indian Springs Road, Budd Lake, New Jersey.

MR. CORREALE: Mr. Rucereto did you hear the comments by the township engineer Mr. Gene Buczynski as to your application?

MR. RUCERETO: Yes.

MR. CORREALE: And you agree with his comments as to how he described this application and certain conditions that would have to be fulfilled?

MR. RUCERETO: Yes.

MR. CORREALE: Do you agree to those conditions?

MR. RUCERETO: Absolutely.

MR. CORREALE: And you understand that those conditions and the resolution hopefully approved by the Board in the near future? Do you understand that?

MR. RUCERETO: Totally.

MR. CORREALE: And you have no objection whatsoever?

MR. RUCERETO: None.

MR. CORREALE: Do you have any comment of any kind in light of and in response to what Mr. Buczynski had to say?

MR. RUCERETO: Not at all.

MR. CORREALE: Is that sufficient?

MR. BUZAK: That's fine I do have one question. There's a preexisting nonconformity with Lot 48 which is the side yard setback of the existing dwelling. This application will not intensify in any way that deviation from the ordinance. I just want the record to reflect, and the applicant to understand that there has not been an application for a variance for that. That's preexisting it's nonconforming but the Board is not considering granting any variance for that it remains as is.

MR. CORREALE: Do you want me to ask him that? Mr. Rucereto do you understand that this application tonight does not include any application for any variance relief from the Board. Do you understand that?

MR. RUCERETO: Yes.

MR. CORREALE: And if there's any, I think in this case there's a side yard preexisting?

MR. BUZAK: Correct.

MR. CORREALE: You understand that this application tonight if it's approved by the Board in no way will grant that to be a variance approval. Do you understand that?

MR. RUCERETO: Right.

MR. CORREALE: This is just the lot adjustment you understand that.

MR. RUCERETO: Totally.

MR. CORREALE: I think he understands.

MR. BUZAK: Okay that's fine. Did you say the Smith's are here?

MR. CORREALE: I don't know that.

MR. BUZAK: Okay I'm sorry I thought you said they were here.

MR. CORREALE: I just indicated the history of the case I don't know if they're here.

MR. BUZAK: That's fine.

MR. RUCERETO: No they're not here.

MR. BUZAK: Okay that's fine.

MR. WEISS: Okay it sounds like we have what we need. Gene anything else?

MR. BUCZYNSKI: That's it.

MR. WEISS: Okay Chuck nothing?

MR. MCGROARTY: Nothing Mr. Chairman.

MR. WEISS: Anybody from the Planning Board have any comments or questions?

MR. NELSEN: I have a question.

MR. WEISS: Dan?

MR. NELSEN: Mr. Correale said that the Smith's are not here or Mr. Rucereto . . .

MR. CORREALE: I don't believe they're here.

MR. NELSEN: Right. But Ed this question goes to you.

MR. BUZAK: I had that issue as well because I checked the application and it had not been signed by the Smith's as the owner and obviously it's their property that's being reduced in size as opposed to Mr. Rucereto. However Catherine provided me before the meeting with a signed copy of the application by the Smith's so they understand obviously they've consented to this application. They don't have to be here because the applicant only has to be here but we did need their consent and that has been furnished. So I understand your concerns but I think as a result of their consenting to the application that's sufficient.

MR. NELSEN: Okay thank you very much.

MR. CORREALE: And I can also put on the record that there is a stipulation of settlement related to the litigation dated November 25, 2013 in which their attorney agreed to the settlement and this application is part of that settlement understanding.

MR. WEISS: Okay anything else? Scott did you have a question?

MR. VAN NESS: Well we have an issue with the existing buildings but we will need to address them individually.

MR. RUCERETO: Yep totally understand Mr. Van Ness.

MR. VAN NESS: After this is approved and the ordinance is signed then we need to address the issue.

MR. RUCERETO: I totally understand that.

MR. WEISS: Okay anything else? At this point let me open it to the public if anybody in the public has any questions based on the testimony you've heard this evening? Seeing none I'll close it to the public. And I will entertain a motion.

MR. RUSSELL: I'll move that PB 14-01 be approved.

MR. NELSEN: Second.

MR. WEISS: Okay thank you Nelson, thank you Dan. Any comments? Catherine roll call.

MS. NATAFALUSY: Judy Johnson - yes
David Koptyra - yes
Dan Nelsen - yes
Nelson Russell - yes
Scott Van Ness - yes
Howie Weiss: - yes

MR. CORREALE: Thank you very much.

MR. RUCERETO: I'd like to thank the Board thank you very, very sincerely.

MR. WEISS: And the same process will hold true in about 30 days we'll sign the resolution at which point you can continue with this process.

MR. RUCERETO: Thank you.

EXTENSION REQUESTS

APPLICATION #PB 11-20 – S & S REAL ESTATE INC.

MR. WEISS: Okay we have on the agenda two extension requests. The first one is PB 11-20 S&S Real Estate Inc. at 142 Route 46 Block 3207, Lot 3. Good evening.

MR. DWYER: Good evening Mr. Chairman Patrick Dwyer from Nusbaum, Stein on behalf of the applicant S & S Real Estate Inc. We're here seeking an extension of a preliminary and final major site plan approval that was adopted by the Board in March of 2012. There are a number of additional governmental permits which are needed for this, none of which have yet been obtained and for our understanding the use is still a permitted use in the zone and we're asking for a one year extension.

MR. WEISS: We've all seen the letter that was written to the Planning Board again this is a very simple request. The big key is that there's been no changes to the zoning of this property. Scott it looks like you have something you want to say.

MR. VAN NESS: I have a couple of questions.

MR. WEISS: Go ahead.

MR. VAN NESS: The letter that was provided to us indicates that the reason that you want the extension is because of the difficulty in the real estate or in the market overall.

MR. DWYER: Well it's also as a result of the fact of that none of the additional approvals that are necessary to build have been yet obtained.

MR. VAN NESS: My original understanding was that the doctor who was building this project was actually going to occupy the building.

MR. DWYER: Yes.

MR. VAN NESS: I just see that as a discrepancy is that part of the issue?

MR. DWYER: No he currently has offices he just at this time has not yet made the move to the new place.

MR. VAN NESS: And the other issue that I have is the property itself in its current condition is not acceptable. So it needs to be cleaned up.

MR. DWYER: Okay.

MR. VAN NESS: Thank you.

MR. WEISS: You can treat that as a separate issue.

MR. VAN NESS: Yeah well this is my opportunity to notify them.

MR. WEISS: Okay they would use that to their best discretion I would think.

MR. VAN NESS: I'm sure they will.

MR. WEISS: Do we have any commentary? Ed, Gene, Chuck?

MR. BUZAK: No the Board has the right to grant a one year extension under the statute they've been protected for two years the Board can grant up to three one year extensions so this is the first of . . . the Board can grant two additional ones if that happens to be the situation. After that then the applicant is going to be in a situation where they have to deal with any changes that would be made.

MR. WEISS: I think we might want to just remind ourselves, this is the property on Route 46 that the physician was going to build his practice. It looks like the property has been cleared is that correct?

MR. VAN NESS: Correct.

MR. WEISS: Does everyone remember this application?

MR. VAN NESS: There was an old house on the property . . .

MR. WEISS: Yeah there was an old house it's directly across from that strip mall that's got the Budd Lake Bagels and Domino's is in there. Is there any other change?

MR. DWYER: No other change Mr. Chairman.

MR. WEISS: Okay I have no other questions is there anybody on the Planning Board have any questions? Okay so the Planning Board needs to determine if we're willing to give a one year extension or the applicant has asked for a one year extension . . . Go ahead Scott.

MR. VAN NESS: Motion to approve the one year extension as requested for PB 11-20..

MR. NELSEN: Second.

MR. WEISS: Okay motion by Scott and second by Dan. Is there any comments? Seeing none let me before we take a roll call, anybody from the public have any questions or comments for Mr. Dwyer? Seeing none Catherine roll call.

MS. NATAFALUSY: Judy Johnson - yes
David Koptyra - yes
Dan Nelsen - yes
Nelson Russell - yes
Scott Van Ness - yes
Howie Weiss - yes

MR. WEISS: Good luck Mr. Dwyer.

MR. DWYER: Thank you very much.

EXTENSION REQUEST

APPLICATION #PB 99-31 – ARD MOUNT OLIVE ASSOCIATES, L.P.

MR. WEISS: Okay our final extension request of the evening is PB 99-31 ARD Mount Olive Associates LP Phase 2 preliminary approval for Morris Chase location on Flanders Road Block 4400, Lot 79. Mr. Hoff welcome back.

MR. HOFF: Good evening Mr. Chairman.

MR. NELSEN: Mr. Chairman I'm going to recuse myself.

MR. WEISS: Thank you, Dan will be stepping down from this application.

MR. HOFF: Mr. Chairman, member of the Board for the record Richard Hoff from the law firm of Visclair Hoff here on behalf of ARD Mount Olive Associates LP. Here tonight for the purposes of a remand for a determination for a determination by the Board relative only to the lots within Phase 2 Morris Chase that are subject to preliminary approval. During the hearing back in early 2013 I guess was the public hearing I introduced a map it's probably the easiest way to determine what lots we're talking about, the blue versus the green. I have that map here again with me tonight for members of the Board, members of the public. The blue lots are extended through September 5, 2014 those are the ones that are subject to final approval, we're here tonight for determination of how long the extension for the green lots should be extended. That's pursuant to the Judges opinion that's within the discretion of the Board I'm here really just to answer any questions. For members of the public we did provide public notice for the Board's information I did receive a number of phone calls I answered questions to the best of my ability and I explained that this is not a development application for permits tonight nothing gets built as a result of tonight's hearing. This project remains subject to outside agency approvals which are noted both in the resolutions of approval as well actually on the final plat that are subject to these lots. So we're here tonight for a continuation of an existing approval and with that I'll leave it to Mr. Buzak for any further edification and any questions by the Board and the public.

MR. BUZAK: What I'd like to do Mr. Hoff is just mark that exhibit as exhibit A-1 and if you would do that that would be helpful we're familiar with it but for the purposes of the record and for the members of the public's comment.

MR. WEISS: A-1 is delineation between Phase 1 and Phase 2 lots essentially.

MR. HOFF: Correct its labeled Morris Chase Phase 1 and Phase 2 location map it contains a legend explaining the colors that are set forth here. But it is it delineates what's preliminary lots and what are final lots in Phase 2.

MR. WEISS: Ed you said you did make that available for the public for them to see?

MR. HOFF: Well I brought it with me tonight. It wasn't attached to the notice but I have extra copies.

MR. WEISS: I think we've seen that you might want to share that with the public. I don't have a problem with that if anybody from the public wants to see it.

MR. BUZAK: Mr. Hoff can you just bring me one this way I'll have it handy as they're making any testimony.

MR. WEISS: So I think we know because we've been involved with this project for a while the legality of where we are and what's going to happen.

MR. HOFF: Would you like me to give a history?

MR. WEISS: I was going to ask you and again it's an early enough hour of the evening. And I do appreciate your cooperation with the public Mr. Hoff I understand this is not a new process but I certainly think that for the good people of the town that came out to have their voice I appreciate what you'll do with us. Why don't you for the purposes of those that are here this evening, Mr. Hoff is willing to explain the process what brought us to here, what's going to happen and then we'll certainly hear your questions and concerns and we'll do the best that we can to help you with that. So again we do thank Mr. Hoff for taking the time to explain what he's about to explain.

MR. HOFF: And Mr. Buzak will certainly correct anything that I miss or mischaracterize. I start at the beginning this project was originally approved back in 1988 it was approved primarily in the configuration you see here save four or five lots of total yield. After 1988 when it was approved it was subject to a wetlands permit issued by the US Army Corp. of Engineers. In about 1992 the DEP of New Jersey overtook jurisdiction of wetlands in New Jersey and required anybody that had a national permit to resubmit for an application for wetlands delineation. The owner at the time ARD through a prior entity but effectively the same owner that's here tonight filed that application with DEP and was rejected. They filed a subsequent permit what's more commonly known as a Letter of Interpretation relative to the wetlands boundary to create what had been approved in 1988. The DEP denied that, ARD and the DEP were then parties to litigation for a number of years that resulted in 2000 in a settlement that reconfigured a little bit of the property it went from 418 units to 413 units but more importantly it created a new phasing for the project. You'll here tonight members of the Board; myself refer to Phase 1 and Phase 2. Most large projects are constructed in construction phases you can have phases 1 through 10 depending on the size of the project. The phasing for this project is unique it was phased along what was agreed by the DEP, the applicant ARD and ultimately through the Board of the wetlands lots versus the non wetlands lots. And I say wetlands lots with no acknowledgement on our part that they are in fact wet and I'll explain that. What was agreed to was that the DEP agreed that the lots shown on this map in white were dry they could be subject to building immediately. Immediately was a relative term because it didn't happen for many years after but those were recognized to be dry lots. The blue and the green were not recognized to be dry lots the DEP maintained that they would need to be subject to further approval by the applicant or the owner. Effectively what we would need to do is go back to DEP at some point in time and say hey listen these lots aren't wet I would like a new delineation of my wetlands boundaries and by the way I don't think that it's appropriate for the blue or the green to any more be characterized as wetlands. The DEP didn't agree with our position they simply agreed that at some point in time we would be entitled to file that application. The basis for that was that our belief was that when you started building this project and as you all probably know it was subject to blastings, significant improvements on this site. Our belief was that the blue and the green were not true wetlands they would naturally dry out as the site was developed and when they did dry out we would be entitled to go back to DEP for further permits. They may dry out they may not dry out that is subject to a subsequent approval that has not yet been issued by the DEP. So as I stand here today you cannot build on the blue and you cannot build on the green. We'll get to why the blue and the green are differentiated but although the blue exists they are on a final plat I get a tax map my client gets a tax bill for these blue lots, they cannot be built on until an outside DEP wetlands permit is achieved. So what happened was that became the new phase line. You had Phase 1 which is the white; you had Phase 2 which is the blue and the green. ARD sold Phase 1 to Toll Brothers, Toll Brothers then went on to build and is still building the white lots which some of you obviously live in. But Phase 2 was still subject to an approval that was granted by this Board in the year 2000 that has been extended over time and remains in effect today. The basis is that, and there's case law that has been established it's been up and down to the Supreme Court, but effectively what it holds is that there was recognition that Phase 2 could not be built until Phase 1 was completed. So Phase 2 did not commence in earnest I don't believe until 2005 or 2006 when Toll Brothers actually finally started doing work out there. And they're still doing work out there Phase 2 is still an active construction site and homes are being sold. So we have been going to the Board. . . .

? You mean Phase 1.

MR. HOFF: Phase 1 sorry. So we've been going to the Board for Phase 2 extensions as ARD. Toll goes I presume for extensions of Phase 1 over time I know they've been to the Board a couple of times, I'm not here on behalf of Toll Brothers. They have Phase 1 now it's separate they have a different approval that governs their project. Now the blue lots have final approval the green lots have preliminary, why is that? When Toll Brothers created the final plat for the Phase 1 portion of the project

for reasons that despite our best efforts we could not figure out these blue lots got placed on that final plat. They got recorded they are not in Phase 1 they cannot be built for the same wetlands reasons as the green lots. Simply as best we can tell just as an error an honest error by the creation of this final plat for Phase 1. So to correct that error the Board determined that rather than undo the plat what would happen was you would have two approvals in Phase 2. The blue lots would have final approval the green lots would have preliminary approval. They still are subject to the same restrictions of outside agency approval that being wetlands approval but they're simply going along on parallel tracks under different approvals is really all that it matters. There's technically under the law yes in the final approval you would need final approval for the green lots eventually but Phase 2 lots whether they be green or blue are subject to the same type of restrictions. We need to establish the wetlands we also need to establish certain infrastructure. I mean obviously you need water you need sewer all of that needs to be established for the blue and the green. So as I indicated we've been coming back to the Planning Board to seek extensions of the approvals that govern Phase 2 both the blue and the green. We applied back at the end of 2012 for an extension of time to allow that approval to continue. At that time the Board granted approval of the blue through September 5, 2014. The Board however denied the approval that was applicable to the green. ARD appealed that determination and the Superior Court indicated that the Board should have granted approval to the green and remanded it back to the Board tonight to consider what approval period should be attributable to the green portions of Phase 2. So tonight's hearing is about that it's about only how long should the approval that subjects the green continue in effect. So this is not as I indicated the outset an application for us to pull any building permits it's simply a remand hearing for the Board to determine how long they believe the green lots should continue in effect under their existing 2000 approval. So that's as good a summary as I guess . . .

MR. WEISS: You said that very accurate. Mr. Buzak?

MR. BUZAK: I'm going to add two things to what Mr. Hoff said, everything he said is accurate I believe the actual approval was in 1989 as opposed to 1988 but a year or two doesn't matter certainly from back then. The two things I wanted to point out were that those green areas on this map if you count them up I think there's 8 lots or 8 parcels those are the ones that are in fact the subject matter of the discussion before the Board. But you should be aware that those 8 parcels have preliminary approval for being divided into 63 lots. So if ultimately there's construction on this property and final approval is granted those larger parcels will be subdivided and there's actually a map that shows how many lots are in each of those parcels but the total amount that is there is 63. So I don't want anyone to be misled or to misunderstand and think that okay well we're talking about 8 lots here or 10 lots whatever the number is we're talking about 63 lots that will go within those green areas. The second thing that I'd like to clarify is that the application is for an extension of the protections of the existing zoning ordinance. A developer who has subdivision approval, preliminary or final approval has that approval it doesn't evaporate it's there. It was granted legally by this Board and once it's granted it remains. What changes is the underlying regulations so in this case the zoning in this area has been upgraded to 1 acre lots. This development was approved on roughly a third acre lots so the applicant although they have their approval forever they don't necessarily have protection of relying upon the existing, the ordinance as it existed at the time their approval. So when they came back before this Board in early, I think it was 2003 or 2004 whatever it was and we got into this by then the ordinance had changed the minimum lot size had been upgraded to 1 acre and the Board, and this is my characterization of the Board's determination at the time, the Board felt that this subdivision had gone on long enough it had been approved in 1989 it was now 2004 so 15 years had gone by the zoning had been changed I'm not sure maybe in the late 1990's early 2000 and they said you know you ought to comply with the new zoning. So this really needs to be resubdivided because all of these lots are undersized. So the Board denied an extension of protection that said you had to comply. That denial was challenged by the applicant successfully throughout all of the courts in the State including the Supreme Court. The Board went all the way up to the Supreme Court with this determination, with that case the Supreme Court denied certification and the court below it had upheld the applicant's position. So the applicant came back based upon that and the Board was constrained to grant an extension based upon those cases. Those extensions were continued on a couple of occasions after that and as Mr. Hoff said in 2012 I believe it was they came back for their extension and the Board denied the extension on these green lots. That was again challenged by the applicant and the court reversed the Board's decision and sent it back here with a direction to grant the extension to the applicant. So the point I am making is that the Board has very seriously considered the issue of the upgrade in the zoning and on two occasions has attempted to impose the higher standards on this applicant and the applicant has successfully challenged that and the courts made its decision and the Board is constrained to abide by that. And that is not meant to denigrate the applicant's position or anything like that I just want the public to know the rest of the history here and how the Board looked at it and now what is before the and what's before the Board is the length of time that it should grant these protections. You should be aware as a result of this decision and as a result of the earlier decisions that went up to the Supreme

Court all of the courts have viewed this project despite its phasing as a singular, essentially a singular project. And the courts have routinely been reluctant to and in fact have refused to separate the two. While they're designated as Phase 1 and Phase 2 and Mr. Hoff has outlined how this whole thing came down, the courts have unanimously seen this as a comprehensive overall development. And despite the fact that the Board has on a couple of occasions as I just mentioned separated those two and said you know you can go ahead with Phase 1 you can go ahead with the blue lots eventually if you get those approvals but the green lots we're done with. The courts have not seen it that way and this is the first time that has happened. So given that history and given where we are there are some constraints upon this Board's discretion. While they have discretion in terms of how long the reality is that it's likely this development will continue until it's built.

MR. HOFF: One more point of clarification Ed made an important distinction the green can be divided into smaller lots so I thought I would give you the totals. Phase 1 consists of 278 units; Phase 2 will consist if built out to maximum 129 units. Now that's a mix of single-family and townhomes and there's 8 additional lots that have been referred to as buffer lots which are part of Phase 1 but do not appear as if they will be developed. So the total project is 415 units that is how it breaks down.

MR. WEISS: So let's proceed this way then because we all kind of agree that . . . we've summarized this situation, let me open it to the public some of you have questions and I'm going to ask please step to the podium state your name and address for the record and feel free to ask a question I'll even if you have a comment. Understanding the situation as both Mr. Buzak and Mr. Hoff have laid out.

MR. DARWICK: Good evening Jeff Darwick 43 Lamerson Circle Budd Lake, New Jersey.

MR. BUZAK: Sir could you spell you last name please?

MR. DARWICK: (D-A-R-W-I-C-K). Just a couple of clarifications this is not my area so . . . Even though the court said they had to be approved it's subject to the one acre zoning or the old regulations?

MR. WEISS: Well the court didn't tell us to approve anything the court told us that we need to grant an extension to keep his approvals alive for lack of a better word. There's no approval being granted.

MR. DARWICK: But when it is built is it subject to the one acre or the previous regulations?

MR. HOFF: Previous.

MR. BUZAK: The previous.

MR. WEISS: Based on the standards that were in place at the time of the original approval.

MR. DARWICK: Because it was treated as one development? Is that the reason?

MR. WEISS: Well not necessarily because those were the bulk standards in effect when they came in for their application.

MR. DARWICK: Okay. My second question is my understanding is you can't have Phase 2 until the wetlands dry?

MR. HOFF: We cannot get a building permit for anything in Phase 2 absent an approval from DEP that they agree that any given lot is dry. They have to issue another permit to us.

MR. DARWICK: Okay so it's lot by lot as its dry or . . . I'm just not familiar with it.

MR. HOFF: No what likely happens is you go in for what's called a Letter of Interpretation and they'll go out and they'll flag what the applicant believes is dry and what the applicant believes is wet. That will go to DEP they'll review it they'll actually come out do a site walk and ultimately the DEP will make the determination on what they believe is the wetlands boundaries.

MR. DARWICK: Based on your evaluation how close is it to being dry?

MR. HOFF: I have no idea.

MR. DARWICK: Or in anyone's evaluation?

MR. HOFF: I have no idea.

MR. WEISS: And I don't think it really matters because it's not up to any of us that's up to the State.

MR. DARWICK: I thought it was previously looked there would be some evaluation. Thank you.

MR. WEISS: Anybody else from the public? Sir you'll do the same state your name and address for the record and spell your last name.

MR. KNECHT: Good evening my name is Robert Knecht (K-N-E-C-H-T) 8 Fields Way in Budd Lake and I live right next to a few of those lots. I have a question for you, when my wife and I built this house we built our house the end of May of 2013. The question I have for you, none of this about further development was disclosed to us as part of purchasing the houses in this development. And I'm not a lawyer and I don't understand the small print but I do understand that when I go in on good faith to buy a piece of property and I'm told that there are wetlands on the right, wetlands on the left that's wetlands and that stays wetlands as far as I know. So I have to admit I'm a little surprised to hear after living there for less than a year that there's already a sudden desire to start building on this property. And I'm just concerned with it and I guess there's nothing that I'm looking to do at this point to try to alter the direction of where this is going but I think in terms of good faith and in terms of public disclosure I think Toll Brothers needs to do a much better job when they sell the property to disclose what's going on. I mean like I said I can't change a thing you can obviously hear that I'm upset with the fact that someone wants to come and start building at some point in time and I get that. But I have to believe that there's a level of open disclosure that has to occur and I don't believe that's occurred at all.

MR. WEISS: Yeah I kind of feel your pain and unfortunately we can't control what Toll Brothers says in their sales literature. Maybe it's a little bit helpful to know that it's not a given that this applicant will ever be able to build on that it's just a decision that we're not going to make this . . .

MR. KNECHT: No but when you grant the right for them to build on specific pieces of property don't you hold accountability for them to do full disclosures of the surrounding properties that are going on there? Wouldn't you tell someone that by the way in two months we're going to start blasting that mountain behind you so you know if you're buying that house over there, or we're draining the lake in another year wouldn't you feel an obligation to make sure people . . .

MR. WEISS: The only thing that I can tell you is that I can assure you that before they ever built, poured the first bit of cement on your home that the township was fully aware of what the plans were.

MR. KNECHT: Oh I'm sure the township was I'm not questioning that.

MR. WEISS: So there's no surprise from our end, obviously it's concerning to you but . . .

MR. KNECHT: Well I think in speaking for the folks that are here and for the folks that aren't here I think a lot of us are under the same impression that when you buy something you buy it knowing what you're getting into. I mean at the end of the day when you show a full map of the property and you show all of the green lushness of the surrounding property around that and you show the trees and there's no indication of the phase. There's a problem with that because you're not implying any kind of future development. So I'm not going to prolong it I'm just telling you that I'm very disappointed.

MR. WEISS: Yeah I can see your frustration especially if some of you good folks bought a piece of property for an upgrade because you were next to a vacant lot that would be quite wrong in my eyes.

MR. KNECHT: Well yeah I mean the problem is we bought on Fields Way and on Fields Way to our right of 8 Fields Way if you look at I think it's 44 or 45, 43 or 44 you can see the . . .

MR. WEISS: Yeah 44 that's it.

MR. KNECHT: Yeah so basically you can see the desire there. Okay thank you.

MR. WEISS: All right thank you.

MS. MERKEL: My name Sherry Merkel (M-E-R-K-E-L) and I'm a homeowner in Morris Chase 30 Lamerson Circle. My piece of property is actually right next to one of the blue areas on the map where they've already received final approval understanding that the DEP has to come in and approve that as wetlands if not it's dried wetlands I guess. My question really and we all . . . I can't speak for everybody but the majority of us share the concern of the gentleman that we paid lot premiums and we were told that nobody would ever build next to us, behind us and so on and so forth. So my question really is we have concerns as homeowners about the parking situation, the ability for emergency vehicles to get through the street in this current existing state and that as it gets built up more and more that situation would get worse. So at what point or do we have any say or at what point could we bring up concerns if the approval is granted for ARD to build. At what point do we appeal to the Board to have somebody look at the situation with parking emergency vehicles and so on and so forth. To kind of have somebody look at it you know to see whether or not it's really feasible to build in these areas or is that a non-issue at this point.

MR. WEISS: No that's a very fair question. What's going to happen is the process will continue and at any time that this applicant is before this Board you'll be noticed.

MS. MERKEL: Okay.

MR. WEISS: You'll be noticed as to exactly what's going to happen. When and if they come back in front of us with certain approvals from the State and they're going to go forward with the next phase of their approvals those are the times when this applicant is going to have to give that kind of testimony.

MS. MERKEL: Okay.

MR. WEISS: And you as a homeowner as a neighbor certainly have every right to put up an objection to state your own case to put up your own argument. This unfortunately is not the time because we're not talking about specific but like any other application, I know most of the infrastructure is already in Gene is that correct? The infrastructure is in taking into account the extra lots?

MR. BUCZYNSKI: That's correct.

MR. WEISS: Yeah so that's already been addressed, not to say that you don't have the right to address it again. I do suggest if that's the goal come in with an expert to talk about how you don't feel for example the circulation plan is safe. Anything that you feel is a problem you're certainly welcome to give your opinion but if you really want to make a statement do it with a professional.

MS. MERKEL: Is there a site plan that we can see then for . . . because right now we see delineations for the 63 units and then you know the green areas where that will be subdivided eventually. So is there anything that we can see that shows where parking areas would be, the specs on the width of the streets or . . .

MR. WEISS: I'm sure we have more plans than you have time to look at.

MR. BUCZYNSKI: The width of the streets aren't going to be any different than what they are right now.

MS. MERKEL: Well we believe there's a problem now so that's our concern is that it's going to get worse.

MR. BUCZYNSKI: As far as the plans go there's plans in the Planning Department that shows the development.

MS. MERKEL: Okay. In its entirety with parking and everything?

MR. BUCZYNSKI: Yes.

MS. MERKEL: Okay.

MR. BUZAK: Mam before you sit down I just want to clarify the record here. The notice that in the event the applicant comes forward there may not be individual notice to property owners. It

depends upon what that is you know what the request is. The applicant gave notice for this matter but that does not mean they are . . . there's certain applications they have to give notice for and certain applications they don't. So depending upon what application is made they may not be required to give notice. So I don't want you to leave here and think that okay I'll be notified of this I'll get something in the mail because things may happen and you're not required to be notified. So what I suggest to you is that you be vigilant about what's going on as we said there are plans for this entire development in the Planning Board office you are welcome during business hours to come in there Catherine will lay them out for you and you know you can see everything you need to see. But in terms of activity on this development I think you just need to be vigilant. You know you look at agendas see what's on, and I know that puts a burden on you but you know you can't, and I say this respectfully at the applicant you can't rely upon the applicant giving notice in situations if they don't have to give notice.

MS. MERKEL: I appreciate that and we will try to be as vigilant as we need to be. Thank you very much I appreciate it.

MR. RUSSELL: The agendas are available on the town website.

MS. MERKEL: They are okay.

MR. RUSSELL: We have an agenda that's published every meeting this is on the town website you can look it up in advance.

MS. MERKEL: So we'll get advance notice if we . . . okay terrific thank you very much.

MR. HOFF: Mr. Buzak if I could for the record to I didn't grab enough copies of this but this was also introduced at the last meeting it indicates, I mentioned during the presentation the buffer lots the Phase 2 lots that are owned by Toll they are marked on this in red. It's only 8 lots but I want the record to reflect that there are . . .

MR. WEISS: What exhibit are you . . .

MR. HOFF: I just marked it exhibit A-2 for tonight I'll leave it on the table.

MR. WEISS: It shows the Toll Brothers lots in Phase 2.

MR. BUZAK: And again just for the public's benefit when Toll Toll purchased 8 lots of Phase 2 from this applicant ARD. Those lots according to Toll are going to be utilized as buffer lots and they will not be built on. Now Mr. Hoff is just pointing out that he's got a map that shows where those 8 lots are. Now my recollection is that Toll has represented that they are not going to build on those lots. I do not think, and Mr. Hoff can correct me because he's more familiar with the lots perhaps, I do not think that they are prohibited from building on them if they dry out and if they apply to the DEP. Do you know anything about that Mr. Hoff?

MR. HOFF: I don't I just want to make clear that they are not owned by ARD so I'm not here to make any representation on what they can do with those lots. Unfortunately A-1 marks them as dark blue because A-1 only does the difference between Phase 1 and Phase 2 but I had forgotten during the initial presentation, for further confusion, there are 8 lots owned by Toll in Phase 2 ARD does not own or control they are marked in red. They are all townhome lots and they . . .

MS. MERKEL: Yeah and one of those lots is actually the piece of property next to mine and I did get the specs from Toll Brothers or the site map and it does say cannot currently build due to wetland restrictions.

MR. WEISS: Currently is the key word.

MS. MERKEL: Yes.

MR. WEISS: Okay thank you. Sir same thing state your name and address spell your last name for the record please.

MR. DUELL: Sure good evening everybody Mike Duell (D-U-E-L-L) my wife and I live at 42 Lamerson Circle in Morris Chase. Basically if you look at the map here we're right, that corner lot that's in blue if this green area is allowed to go through. Basically what I want to get across I understand the focus of this, this is basically to establish the expiration date on what the court ordered judgment is to

you. I just like to get a couple of brief moments here we're all a little upset I think the second gentleman hit it on the head there's things that don't involve you that were areas of nondisclosure that were brought to our attention from our builder which doesn't involve you and now you're feeling a little bit of that aggravation tonight. So my comment is I'm a retired police officer 28 years service in Randolph I retired as Chief of Police I've been retired about 11 years plus I've been in the security, safety field since I was young my entire adult life I spent in there. What really raises a red flag to me ladies and gentlemen is this Pembroke Lane that butts out. And I don't just say that because I'm affected and we're part of that corner lot, what bothers me is the density if this is allowed to proceed. Counselor I believe you said there are 400 lots that you're going

MR. HOFF: 415 lots.

MR. DUELL: 415, how many of that number are going to be townhouses?

MR. HOFF: Now you're testing me. Do you have that one Ed?

MR. BUZAK: I'm looking.

MR. DUELL: Just an approximate would be fine sir.

MR. BUZAK: Let's see Phase 1 was 276 units comprised of 171 townhouses and 105 single-family homes, Phase 2 I have an aggregate of 137 but let me see if I have the breakdown here.

MS. NATAFALUSY: 79 townhomes and 58 single-family.

MR. WEISS: 79 townhomes.

MR. DUELL: Okay.

MR. HOFF: That's just in Phase 2 plus what Ed just said for Phase 1 what was that?

MR. WEISS: I think Mr. Duell is concerned about . . .

MS. NATAFALUSY: 250 total townhomes Phase 1 and 2.

MR. DUELL: Okay. My focus is Pembroke and what leads up to it. Basically what we have around . . . if you look at a perimeter of Lamerson Circle the entire perimeter of it we counted out, my wife and I counted out we have 63 townhomes that lead from the very top by Canterbury all the way around to the well house that's the last established townhouse. This road is a private road it's not dedicated to the township Title 39 Motor Vehicle Statutes haven't yet or I don't know if they're going to be applied to this town. It is maintained not by a professional road department it's maintained by a contractual bidding process that we have very say in. These guys don't have the equipment that a road department does this was evidenced by this recent winter storm which was an absolute nightmare. Where I saw . . . I would go to work especially up here on Scarborough where there are a lot of cars parked on the street you have young adults living with their parents and multiple cars in the driveway. See we all have one garage with the few exceptions with two garages but in addition to that if you have a couple of other drivers one car has got to be out on the street. My point being a fire truck a ladder truck because it's 8 feet about in width and about over 25, 27 feet in length and making such a turn onto Pembroke and responding to a fire would be very difficult if we had a couple of cars on the road. Especially if we had that number of residences on Pembroke, so that's a public safety matter and concern that I just would like to bring to your attention. I understand it will be addressed further down the line if and when this area dries up and the approvals are sought. My interpretation of walking this area this is a giant basin here there's freestanding water I don't have to be a DEP engineer to stand on my back deck and see a stream going down north and south which traverses down into the lower end of this basin. I walked it the other day when I received notice, the Counselor sent the registered letter to our address and it is wet I came upon three streams they weren't large trout streams but never the less it's very wet and you kick the weeds and the vegetation is conducive to a swamp. I think it's the applicant's hope that by cutting this Canterbury Court road that will reduce the flow of water into this wet area and it will go through the catch basin and not add to the aquifer and to the standing water that it is dispersed in this area. But again it brings me back to the construction of the street, the narrowness of the street, emergency vehicles getting in here and I just wanted to have that on the record. Thank you for all your time.

MR. WEISS: Mr. Duell those are exactly the issues that we'll consider at the appropriate time.

MR. DUELL: Good thank you very much.

MR. BUCZYNSKI: Mr. Chair just so nobody gets the wrong opinion don't forget the size of the roads and the traffic control has already been addressed during the preliminary plans. So I can't speak for the applicant at that time when they come in but I don't think they have to address those issues they might be brought up by the people and the Board can decide if they want to request additional information to be provided. I don't think the applicant is going to have to really first issue that information because it's already been approved.

MR WEISS: I think my advice was consistent that it's truly objectionable and the appropriate professionals would in their best interests.

MR. DUELL: Okay great thank you. And the fire preventions officer?

MR. WEISS: Not Mount Olive Fire Department.

MR. BUCZYNSKI: They've already approved it.

MR. WEISS: It's already been done from our end.

MR. DUELL: They've approved it.

MR. BUCZYNSKI: That whole project has been approved.

MR. DUELL: With the number of lots in the green area.

MR. BUCZYNSKI: Yes sir.

MR. DUELL: All right thank you.

MR. WEISS: Anybody else from the public?

MS. HEYDT: Laura Heydt I live on one of the clogged cul-de-sacs number 23 Tutbury Court in Morris Chase.

MR. BUZAK: Spell your last name for the record.

MS. HEYDT: Sure it's (H-E-Y-D-T). A couple of the questions I was going to ask have been answered especially with your questions that you were asking. You know again just from a safety standpoint just to add to what you had said, during this past winter I know it was a really, really brutal winter but again a lot of people do park in the streets because parking . . . especially if you're on one of the first three cul-de-sacs Scarborough, Greenwich or Tutbury the streets really are not wide enough. So that to hear that the whole layout of this plan has been already approved before it was actually built to see what the impact is from a you know life experience living there every day it's an issue. Just at the end of you know this past winter with the last storm that we had I actually have a townhouse with a fire hydrant in the front of my home and before the last couple of storms hit, and I would have to think the town approved it, the fire hydrant was actually disassembled so that the snow plows would not damage it. So I have a concern that even though all of this layout has been approved by the various different emergency service departments that there's certain allowances or considerations that should have been taken into consideration with how populated this development has actually turned out to be. Another question I have is I'm not familiar with the building process for Mt. Olive but assuming that the wetlands you know act or once the studies are done on these blue and green areas if they are approved as acceptable building lots, at what point in the process once a developer purchases it whether it's ARD or whether it's sold to Toll Brothers later on at what part of the process do we as homeowners of Morris Chase have any input a couple of years down the line for what type of homes are being built? And what's an approvable, like you were mentioning before because of 1989 when this subdivision first initially went into place that the zoning was three quarters of an acre and it's been upheld for ARD, it could be three quarters of an acre go forward. What about the townhouses how do we know that there will not be additional instead of 79 townhome lots as it's presented now it could you know become condos or something later on. So how do we know that from a zoning standpoint that you know for the

zoning purposes that this will change even maybe 2, 3, 4 years down the line. And unless we read the website to see what meetings are being held we don't know.

MR. WEISS: Well I think to answer your question that would be a tremendous mistake I believe for this applicant to come in and change the layout. Would you agree?

MR. HOFF: Well I could also say that if I amended the preliminary I'd have to go in and . . .

MR. WEISS: You're right of course they can't . . .

MR. HOFF: I need a use variance and I wouldn't put my money on that.

MR. MCGROARTY: Well if they start over they're in the Highlands Preservation Area.

MR. WEISS: That's exactly what I'm saying they can't change what's already proposed. So the 79 townhomes . . .

MR. MCGROARTY: They can't make it more intense.

MR. WEISS: Correct.

MS. HEYDT: Well that's my concern.

MR. MCGROARTY: They can make it less intense but they cannot make it more intense.

MS. HEYDT: But what do we have with the zoning that says that somewhere along the line ARD sells the property to, not Toll but somebody else and it becomes condos I mean . .

MR. HOFF: As Mr. McGroarty just said it's ironically not the Board or the town that will prevent this applicant from doing that. This is in the Highlands Preservation Area so it would be characterized as a major development and in theory you could get a variance from the Highlands, I'm unaware of one ever being granted and I know that sitting here today there's currently no plans other than to extend what is in place.

MS. HEYDT: Okay.

MR. HOFF: And there's limitations on water and sewer infrastructure.

MR. MCGROARTY: Water and sewer are predicated on a certain density.

MS. HEYDT: Okay so that would prevail to prohibit further splitting down or making smaller the buildable lots at this point.

MR. HOFF: But to your larger point about being notified of something like that any change to this project that is considered a substantial change would trigger the notice that would be required by the applicant to anybody within 200 feet. So if we want to commit a substantial change of this project then we would be needing to notify, unlike Mr. Buzak's comments earlier that in certain instances notice is not required one instance where notice is certainly required is if you complete a substantial change to the project such that you would be revisiting the preliminary approval.

MS. HEYDT: Okay.

MR. WEISS: Scott did you have something?

MR. VAN NESS: Is the design of the structures that they want to build also . . .

MR. MCGROARTY: Yeah there's site plan approval for that yes.

MR. VAN NESS: So later on down the road they're still going to be building similar to what you have today. They can't change to something different.

MS. HEYDT: Okay.

MR. VAN NESS: In other words so your townhouses will continue to look like your townhouse.

MS. HEYDT: Well that's a major concern yeah.

MR. VAN NESS: But that's already a part of the initial approval. For them to change that triggers other things.

MS. HEYDT: Okay and again based on the question you had asked about a lot of the streets not belonging to the town, does the town have a plan in place to absorb maintaining these streets in the development?

MR. WEISS: There's a process, somebody better than me can answer that.

MR. VAN NESS: My understanding is that there was a requirement for them to apply for Title 39 when they were completed with the development.

MS. HEYDT: But is that the end of Phase 1 or Phase 2?

MR. VAN NESS: I don't know the answer to that.

MS. HEYDT: Okay.

MR. MCGROARTY: I will say one thing too I mean it's been a very long time since we looked at these plans they go back to 1989 but there were the zoning required and subsequently there's uniform standards apply in New Jersey but there are parking requirements for the townhomes in the driveways and then so called guest parking areas as well. It's not anticipated that there will be parking along the street unless the town has Title 39 and obviously the police can enforce it.

MS. HEYDT: Yeah and unfortunately with the width like I was mentioning before with the width of the streets and with one car garages I know myself I'm lucky I have green grass in front next to my driveway I park on the grass. Because again I have a fire hydrant right in front of my home you know . . .

MR. WEISS: So as Mr. McGroarty just said it might be illegal to park on the roads (inaudible).

MS. HEYDT: Yeah I mean there was one point during the storms we couldn't get the plows through.

MR. WEISS: Well that's another story.

MR. MCGROARTY: The town didn't plow it right?

MR. VAN NESS: It's an active construction site that's still not . . . until it's a complete project the township will not go into there.

MR. MCGROARTY: And I'm sure the town didn't dismantle the . . .

MR. BUCZYNSKI: Well it's always been considered to be a private road.

MR. VAN NESS: So far.

MS. HEYDT: All right thanks.

MR. WEISS: Anybody else from the public? Catherine I have a question for you, as I see these plans looking at the first three cul-de-sacs Scarborough, Greenwich, Tutbury where did those come from where did those names come from? Didn't we name this development coming from the list? Like I think I'm seeing this for the first time those names.

MS. NATAFALUSY: I don't know.

MR. VAN NESS: I don't know that we did all of them.

MS. NATAFALUSY: I mean you have Elias, Ruggiero, (inaudible) I know those.

MR. HOFF: I know the names.

MR. VAN NESS: The roads that were going to be dedicated to the township we named.

MR. WEISS: No, no I think as a committee we took every single road here and named it based on our goals and objectives of the committee. I'm actually looking at Pembroke as well, Canterbury, Tutbury, Greenwich, Scarborough. Is it too late to readdress that?

MR. BUCZYNSKI: Yeah addresses and stuff aye, aye, aye.

MR. HOFF: Mr. Chairman I can tell you the roads changed names at times because I've seen the 1989 plans.

MS. NATAFALUSY: These plans that I have from 1999.

MR. WEISS: Okay so maybe those were done first and then we got involved. Don't worry we won't change the name of your street.

MR. VAN NESS: I think we only addressed the single-family housing roads.

MR. WEISS: Maybe, possibly it goes back that long. Good evening.

MR. D'ANTICO: Hi how are you. I'm Frank D'Antico that's spelled (D'A-N-T-I-C-O) 41 Lamerson Circle. I'm just looking at the map that we see here and I know it really doesn't concern you but Toll Brothers lied to us, and it should concern you because if they come back and they want to do more stuff they're lying. They did not tell us anything about . . . because we've asked about this, we've asked. Because my house is right across from where these townhouses are going to be, I asked is there anything going to be there? She goes no it's wetlands nothing. Is there anything going to be behind? No, nothing. I don't know now if anything is going to be behind us they lied to us. This is Toll Brothers big time Toll Brothers and it should concern you is that builders are lying to the citizens of Mt. Olive Township. This is not right, first of all I don't know if you know the area the parking is horrendous this is just going to contribute to, to me? Accidents and people getting hurt. Now I know it's already approved but this is disgraceful I mean this whole map here is filled in there's still probably selling over here at Toll Brothers with this stuff not filled in. Because I can show you everything that we got when we bought our house in September nothing like this is on here.

MR. WEISS: Are you telling us that parking is a problem because people are parking on the street?

? No. (Some answering from the audience)

? Yes (someone answering from the audience)

MR. D'ANTICO: It's not just that there's this parking . . .

MR. WEISS: We're not going to be able to pick you up.

MR. D'ANTICO: There's insufficient parking the parking space, the guest parking by my house, there is three spaces that's it and there's a lot of townhouses right there. So people are going to park on the street everybody is going to park on the street everybody has at least two or three cars.

MR. WEISS: Is all the parking in so far Gene?

MR. BUCZYNSKI: I'm going to say yes.

MR. D'ANTICO: But I'm just saying these townhouses that are going to be filled in over here it's going to be a disgrace. It's going to be a disgrace and this guy don't care it's going to be a disgrace people are going to get hurt.

MR. WEISS: I don't think that's very fair Mr. Hoff has actually gone well out of his way because the purpose of this meeting was to simply get an extension. And we're dealing with Toll Brothers and Mr. Hoff represents ARD.

MR. D'ANTICO: I understand that.

MR. WEISS: So Mr. Hoff does care . . .

MR. D'ANTICO: We're frustrated because we were lied to and you said before that it wouldn't matter what Toll Brothers said to us it's what's happening now you should be concerned.

MR. WEISS: No I never said that that's not what I said.

MR. D'ANTICO: Well that's what you said I mean the first guy came up you said it really doesn't concern us.

MR. WEISS: I can assure you that we spend hours and hours and not that I'm qualifying that but we have documents, we have plans if Toll Brothers misinformed you I'm going to take your word and I'm going to take your word . . .

MR. D'ANTICO: You have three people here that told you.

MR. WEISS: I'm not questioning any of that.

MR. D'ANTICO: And there's still selling like that to there's still over here like that there's nothing going to be built there.

MR. WEISS: Then I think you as a community need to react to that in any manner that you feel appropriate. I can assure you that the township will not be lied to because they're held to a much higher standard when they come here because we have records, we have . . . everything is being recorded we have documents we have maps, we have plans. They're going to come in and build to what exactly they told us they were going to build.

MR. D'ANTICO: Okay but I tell you if I seen this, if they showed me this there's no way I'd buy in there. No way. Nobody by where my house was going to be this is too congested. Look at it 86 townhouses over there are you kidding me? First of all Toll Brothers hasn't even sold out yet I think there's about 50 lots, good luck selling them, good luck selling it.

MR. VAN NESS: Sir that's got nothing to do with this.

MR. D'ANTICO: Well I'm just saying good luck selling that whoever it is. But it should be addressed to Toll Brothers please do not lie to your citizens. We were lied to. Because they told us nothing could be built there because it's wetlands, nothing. But now all of a sudden a miracle happens and it's not wetlands anymore.

MR. WEISS: That wouldn't be anything in our control if that was to happen. It's a frustrating process and we certainly understand . . .

MR. D'ANTICO: Very frustrating.

MR. WEISS: Anybody else from the public?

MS. ROEMER: Hi Marie Roemer (R-O-E-M-E-R) and I'd like to know . . .

MR. WEISS: Ms. Roemer where do you live?

MS. ROEMER: 8 Fields Way in Morris Chase. We're Lot 46. My question is related to your realm of responsibility or accountability and then what do we as individuals will do when things . . . all the disparities you've been hearing tonight, what can we do and do we work with you guys is there another part of the township that we would contact? Because it appears that you guys believe that things have been satisfied, they came to you, the infrastructure was discussed, they you know rolled out they did the cement, they paved. There's obviously some discrepancies so what are the next steps if we wanted to act. Is it with you guys you know is that something that . . .

MR. WEISS: I think the best advice I can offer is we have zoning and we have enforcement and we happen to have our official here on the Planning Board Mr. Van Ness. I suppose that if you feel that there's some kind of violation we have an appropriate office within the municipality. It depends on exactly what your concern is but if you feel it's a zoning infraction or it's a Code Enforcement if they are not cleaning up or whatever your complaint is you have at this point you have an option.

MS. ROEMER: Would it be a subsidiary of the Planning Board of this . . .

MR. WEISS: it's got nothing to do with the Planning Board it would be down at the Planning office Scott maybe you can help me with this it would be Code Enforcement?

MR. VAN NESS: Yeah Zoning and Code Enforcement is just down the hall in the same office but different responsibilities.

MS. ROEMER: Okay thank you very much.

MR. WEISS: I would think that somebody here had mentioned that the fire hydrant has been dismantled I think that would be an immediate complaint that the township needs to be aware because the builder should not do that and we would have the appropriate enforcement in place to make sure that that's repaired right away. So those type of complaints should be addressed to the township.

MS. ROEMER: Okay.

MR. WEISS: Can't pick you up from back there sorry.

MS. HEYDT: Actually it was a township truck that came with the snow plow. They had to have shut the water off first because I was actually home I'm retired. So it was an actual Mt. Olive Township truck that took off the . . .

MR. VAN NESS: Is it possible that the hydrant was broken?

MS. HEYDT: No we were wondering if they were going to hit with the plow but no because they actually had like a wench that lifted . . . there was two guys that came out.

MR. VAN NESS: Has it been replaced since?

MS. HEYDT: Yes.

MR. VAN NESS: How long after was it replaced? Do you remember?

MS. HEYDT: It was dismantled and taken away I want to say about 3 weeks, 4 weeks, almost a month.

MR. VAN NESS: I'll look into why it was. Can you tell me where it was exactly?

MS. HEYDT: My address is 23 Tutbury Court and it's directly in front there. Yeah they had the mounds of snow what they did was the guys with the plow came out shoveled around because the snow is at least 6 feet over the hydrant.

MR. VAN NESS: See me at the end of the meeting please.

MS. HEYDT: Okay.

MR. VAN NESS: I'll get your information.

MS. HEYDT: Thank you.

MR. WEISS: Okay anybody else from the public have any comments? Okay seeing none from the public let me close it to the public and let's get back to the issue at hand which is the determination by the Planning Board as to the extension that we'll be granting. I do believe that Mr. Hoff explained, tell me I'm wrong, that the extension will be retroactive to the date of the last hearing.

MR. HOFF: That's my understanding of the court's opinion.

MR. BUZAK: Yeah the date of the last extension.

MR. WEISS: The date of the last extension which is September of 2012.

MR. HOFF: September 5, 2012.

MR. WEISS: September 5, 2012 so I do believe that Toll Brothers will be back on September of 2014?

MR. HOFF: We'll be back on the blue on September . . .

MR. WEISS: You'll be back September.

MR. HOFF: That's when the blue expires September 5, 2014.

MR. WEISS: So if this Planning Board were to grant a two year extension would bring you back on a schedule that makes sense.

MR. HOFF: On the blue and green at the same time.

MR. WEISS: So the blue and the green will be addressed on the same hearing.

MR. HOFF: Well that's up to the Board obviously but their approvals would expire on the same day.

MR. WEISS: So if we were to grant a two year extension retroactive back to September 5, 2012 that would see that the blue and the green would be heard together.

MR. HOFF: They would be on the same schedule correct.

MR. WEISS: Okay that would certainly make our schedule a lot simpler and make it a lot easier for those that are in the audience to follow. Anybody on the Planning Board have any comments? Anybody want to make a motion on to . . .

MR. RUSSELL: I'll move that we grant a two year extension to PB 99-31.

MR. WEISS: Okay so you make the motion that we grant a two year extension retroactive to September 5, 2012 expiring September 5, 2014.

MR. RUSSELL: Correct.

MR. WEISS: David?

MR. KOPTYRA: I'll second.

MR. WEISS: Any comments? Ed?

MR. BUZAK: I think that's an excellent resolution.

MR. WEISS: Okay seeing no comments Catherine let's roll call.

MS. NATAFALUSY: Judy Johnson - yes
David Koptyra - yes
Nelson Russell - yes
Scott Van Ness - yes
Howie Weiss - yes

MR. WEISS: Mr. Hoff I do understand we will have this resolution sign for you by next week.

MR. HOFF: Thank you.

MR. WEISS: All right thank you for your patience I do appreciate you spending the time to answer the questions.

MR. HOFF: Not a problem.

MR. WEISS: So again ladies and gentlemen of the public there will be nothing done on this matter until September, I don't know the exact date but watch the schedule through September it might be late August it's really up to the applicant and our schedule. You can certainly enjoy the summer

knowing that there will be nothing done this application won't be back in front of us and I don't believe Toll Brothers has to be in front of us

MR. BUZAK: I don't know when Toll expires, Catherine do you know?

MS. NATAFALUSY: I don't have that.

MR. WEISS: I would think just my opinion is that it's probably around the same time.

MR. HOFF: They were tracking for February's and I think it's . . .

MR. WEISS: I always thought you guys were always kind of close together. Regardless you can check, there will be nothing about this application in front of this Planning Board until September. Thank you for understanding everyone. Do we have any other business?

MS. NATAFALUSY: Just next week we're going to have that as we said the joint meeting with the Environmental Commission, and the Open Space we're going to have a workshop kind of meeting.

MR. VAN NESS: Mr. Chairman?

MR. WEISS: Yes sir.

MR. VAN NESS: Motion to adjourn.

MR. WEISS: All in favor?

EVERYONE: Aye.

MR. WEISS: Meeting adjourned.

(MEETING ADJOURNED AT 8:40 P.M.)

Transcribed by:
Lauren Perkins, Secretary
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